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NATIONALIZATION OF INDUSTRY IN THE UNITED STATES

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PREFACE

The industrial situation in the entire world is becoming more and more involved in an intricate system of control. In some countries this has taken the form of complete nationalization of certain industries, while in other countries the doctrine of laissez-faire is the guiding principle. Most nations, however, adhere to a policy which seeks to include the advantages of both extremes.

As populations increase, the economic and social problems multiply and the need for constructive thought becomes increasingly urgent. The fundamental purpose of industry is to serve society. It is upon this contention that society bases its right to control industry. Most authorities agree that a system involving complete laissez-faire would be impractical but there are many and varied opinions concerning the degree and type of regulation which should be adopted.

It is the purpose of this paper to discuss these systems in order to determine to what extent they should be applied to industry in the United S tates. This requires a careful consideration of past and present economic trends. Some consideration also must be given to the human element and to the defects of our political system.

Many volumes and numerous periodical articles have been written for the purpose of explaining the relation of government to industry. In most cases, however, the writings seem

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to indicate a desire on the part of the authors to promote some personal interest. Government literature, particularly speeches made by members of the legislative bodies, provides interesting reading for the student of nationalization. Professor J. M. Clark's book entitled "Social Control of Business" is very readable and offers much in the way of constructive criticism on the subject. "The Economic Basis of Public Interest", a thesis by R. G. Tugwell, is an excellent presentation of the legal and economic phases of public interest. It explains the rising tendency toward the further recognition of public interest as an important factor in shaping our national policies.

There is a growing need for studies which will assist in correcting present economic evils and in determining future programs. The success of any nation is jeopardized by the lack of interest on the part of its citizens in its economic and political affairs. In order to solve national problems, it is necessary to create an interest in them and it is hoped that this paper may make some contribution in that direction.

The discussion in the following pages is necessarily a brief one but a fairly comprehensive study may be made by investigating the references in the bibliography. In the first chapter the problem is discussed in a general way and a brief historical analysis, including various proposals for social reform, is given. The situation in the United States is given in some detail, with particular emphasis on the tendency

toward combination, the conflict of interests between wage-earners and capitalists, and a discussion of monopolies.

The discussion in the third chapter is largely theoretical and gives a basis for choosing policies which will not conflict with fundamental rights and duties of society. The growing recognition of public interest in legal and economic activity is also discussed. Experiments in government ownership and operation are presented in some detail. The Russian experiment is offered as an illustration of the effect of a complete change in the form of government and the experience of the United States government in operating railroads gives some idea of the results of a business undertaken by a democratic form of government.

The balance of the paper is devoted to a study of regulation, including regulated industries and modern trends in regulation. A fairly complete study of railroad regulation is presented in the fifth chapter. The final chapter summarizes the work of the previous chapters and offers some conclusions. Following the conclusion is a bibliography which should be of interest to those who would make a more detailed study of the subject.

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NATIONALIZATION OF INDUSTRY IN THE UNITED STATES

C H A P T E R 1

INTRODUCTION

The Problem in General:

As populations increase new economic situations arise, thus increasing the number of perplexing problems which confront modern industry. Constant change seems to be the outstanding characteristic of present day economic and social life. We are living in an era of rapid progress. The automobile, the airplane, the radio, and television are but a few of the recent inventions which tend to change our mode of living and our methods of carrying on industry. Future historians will probably consider this modern period of greater economic significance than the industrial revolution of the nineteenth century.

In order that industry may be conducted to the best advantage, for consumer as well as producer, it is necessary that some form of control or regulation be maintained. If this is not done, the consumer will suffer from the effects of unregulated monopolies and the producer will be troubled with unfair competition. At present, strictly private business does not exist. All business is subject to some kind of control. "It is the inevitable result of many causes, centering,

however, in three things. One is organized large-scale production, another is the growth of democracy, and the third is the growth of science and the changing attitude of the human mind itself toward the world at large and toward human organization in particular-"[1.]

The problem which now confronts economists, government officials, capitalists, and laborers is to determine how much control shall be exercised and which industries shall be operated wholly or partly by the government. This question is one that has caused much controversy in economic and political circles in the United States as well as in foreign countries. Experience should be the determing factor in choosing a proper course to follow but unfortunately it is not possible to judge the future entirely by the past because conditions are constantly changing. However, a brief historical survey of economic and social life will give some basis upon which to work.

Historical Survey:

Government ownership and regulation are not recent developments by any means. They have existed since the time of ancient Egypt and Rome. "Five thousand years ago the Emperor of China was beheading the sellers of distilled liquors, while wine sellers flourished unmolested. Even at that far-distant date, government was exercising control over business."[2.]

Perhaps a brief discussion of the stages through which man has passed would enable us to understand better his economic development. Man first found himself as a collector.

1. Reference 18, Page 5
2. Reference Page

During this stage he collected food and clothing in the wilderness and his life was largely governed by climatic conditions. In the next stage he cultivated plants and animals which he kept from one season to another. He continued, however, to roam about but usually in a group. As time went on these nomadic groups settled down and established villages. These villages were not like our modern villages, but they constituted a definite stage in man's economic development.

About the year 1100 A D the villages of the Middle Ages disappeared and were replaced by towns. This development really marked the beginning of the modern period. As the towns grew, manufacturing came into prominence as an industry. It was then unnecessary for men to provide themselves with all the necessities of life. Products could be exchanged, thus enabling one man to concentrate on the production of one or a few articles.

Manufacturing had not progressed very far before merchants and manufacturers in the various towns organized gilds. The purpose of the gilds was to protect and regulate the various industries. The craftsmen formed craft gilds soon after the formation of the merchants' and manufacturers' gilds. As the gilds grew in importance, they became part of the town governments and were extended authority which practically gave them a monopoly of their respective industries in their town.

As the towns grew in importance, town policies were established which included the collection of revenue tariffs,

trade regulations, prohibitions to export various commodities, price regulations, etc. The assize of bread was one of the most successful regulations. This was a system which called for the fixing of the price of wheat, therby making it illegal for bakers to charge an excessive price for a necessity. This regulation has survived in some instances to the present period.

Economic progress did not cease at the period of town supremacy. The towns situated in the most strategi c positions became cities and the nearby towns became subordinate to the cities. Thus came the last stage of economic development. Towns and villages remained but they lost their economic supremacy.

Governments have made many attempts to regulate commerce and industry with varying degrees of success. The most notable example of government folly was the mercantile system which predominated during the seventeenth and eighteenth centuries. Laws were enacted which were intended to stimulate exporting and discourage importing. The object was to increase the supply of gold bullion in the treasury vaults of the various governments by creating a favorable balance of trade. At that time nations were attempting to expand by means of exploration and conquest. This program called for the expenditure of vast amounts of money, particularly when large numbers of soldiers had to be fed and paid.

The mercantile system failed largely because it was no system at all. Officials, who were delegated to enforce the laws, overlooked many important details and thereby made the

entire system inefficient. While exports were encouraged, export taxes continued to be levied which, of course, discouraged rather than encouraged exporting. The fundamental fallacy of the whole policy was the failure on the part of the governments to realize that any surplus of gold bullion is of no great economic value unless it is used for productive purposes.

From the foregoing brief historical survey we find that government regulation and ownership are not recent developments. Man has evolved from the primitive state to his present state, and with each stage in his development came new economic conditions. The situations arising today are vastly different from those arising in the past. Therefore, we must find new means of applying regulation and control in order to meet the needs of modern industry and modern social life.

Comparison of Past and Present Economic Conditions in the U. S.:

When the first colonists came to America they found unlimited riches in the form of undeveloped natural resources which the natives failed to take advantage of, largely because of lack of civilization. Agriculture and fishing, together with some commerce, constituted the major industries of early colonial days. Wealth was fairly evenly distributed and economic conditions apparently were satisfactory at that time.

As the colonies grew, the mother country adopted an unfair and annoying economic policy toward them. This was

followed by a revolution which gave them political independence but economic independence did not come until after the war of 1812. During the period between the revolutionary war and the war of 1812, agriculture continued to be the chief industry, and large amounts of agricultural products were exported while manufactured goods were imported. When the embargo acts were enacted in 1807, exporting was prohibited which of course made it necessary for agriculturalists to earn a living by other means. It also made it imperative that colonists produce their own manufactured wares and consequently, the country witnessed an industrial revolution during the years immediately following. Up to this time labor problems were almost unknown. Land and other resources were abundant so that dissatisfied persons could easily find other employment. The rise of industrialism not only introduced labor disputes but also the monopoly problem.

Thus we find that in the early days of the nation's development, economic problems were comparatively simple. Each person produced most of his wants and the evils of trusts and cutthroat competition were unheard of.

Up to the time of the Civil War and for a few years thereafter, the laissez-faire doctrine of Adam Smith was accepted by the great majority of the people as the logical doctrine to follow. The fourteenth amendment, although enacted primarily for the protection of the negro, was interpreted to restrain interference on the part of state legislatures.

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"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[1.]

After the Civil War the country expanded rapidly. Industries and transportation systems grew as the population increased. Problems that heretofore were only local or sectional became national in scope. It was for these reasons that it became necessary to abandon the policy of absolute laissez-faire and look to the federal government for a system of regulation in order that the wealth of the nation might not come entirely into the hands of a few.

Proposed Solutions of the Problem:

In considering proposed solutions for the problem of regulating the industries of the United States it is well to be cautious in arriving at conclusions. Conditions in this country vary greatly from those in most countries, and consequently, a system that would work out successfully elsewhere might not be satisfactory here. The Russian government has become communistic and the German government has some of the elements of socialism, but if these two governments are successful, it does not mean that the United States would prosper under similar systems because conditions are different here.

1. From the Fourteenth Amendment, Constitution of the United States

INTRODUCTION

The people of the United States, as a whole, have prospered under the democratic form of government which has prevailed since the conclusion of the revolutionary war. The standards found in the United States are far in advance of those found in most other countries. Perhaps this may be attributed to an abundance of natural resources together with a general willingness on the part of the public to accept standardized goods and thus reap the benefits of large-scale production. Under the present conditions it seems unlikely that the people of the United States will seek to adopt an entirely new form of government. Remedies for the existing economic evils of this country will be most effective if they are applied in the form of improvement of the present form of government rather than in the form of a new government. Education and religion should be important factors in promoting the economic welfare of our nation. If there is to be government intervention in business the public must be so educated as to be able to support the authorities in carrying out this function.

Recent contributions toward the advancement of economic and social life are to be found in such legislation as the pure food laws, regulation of railroads and public utilities, safety laws for factory workers, minimum wage laws for women and children, immigration laws, etc. All of these laws have been enacted with the purpose of improving, but retaining, our present form of government.

INTRODUCTION

Many deep-thinking students of the situation seem to believe that relief is to be found only by means of a complete change of government. These individuals offer as means of reform the following systems: state socialism, gild socialism, syndicalism, and finally anarchism. There are many conceptions of what constitutes each of the foregoing and the following paragraphs w ill explain briefly the essential elements of each system.

Individualism:

Individualism was the system advocated by Adam Smith and his contemporaries. It was really a protest against the restrictions of mercantilism and sought to restrain the regulation of commerce by the governments and the regulation of trades by the gilds. True individualism tends to lessen the duties of the State and to increase the activities of the individual. The government should protect its citizens from foreign invasion by maintaining an army and a navy if necessary. It should also maintain courts of justice and carry on certain public works, but all other fields of endeavor should remain open to the individual. Free trade should be permitted between nations, and industry should not be encumbered with burdensome government interference.

Briefly, this was the theory of individualism, but even its staunchest supporters admitted that it could not be practiced without the assistance of some kind of government supervision or control. If civilization is to progress, legislation

must be enacted and enforced to protect workers from unscrupulous employers. Such legislation infringes upon the rights of employers under a system of strict individualism. It is therefore quite evident that true individualism cannot exist, at least not as long as human nature persists in its present state.

Professor J. M. Clark of Columbia University has summarized the possibilities of individualism as follows, "If we are to keep an individualistic philosophy in the twentieth century, we must build it new, in the light of present-day forms of industry and present day pressures of democracy. What the present-day individualist has to defend is not individualism as Smith saw it, but a system of vast impersonal organizations in constant danger of being paralyzed by a deadlock of the interests involved. It is far as possible from the simple one-man-business system which Adam Smith defended so successfully. The control which the present-day individualist resists is not the present-day equivalent of mercantilism-- the"individualists" generally favor the protective tariff-- but democratic and humanitarian control in the interest of just the classes which mercantilism neglected. It is largely an extension of precisely the kind of control which Adam Smith said was always justified. Even the government which does the controlling is vastly different from that of eighteenth-century England.

It is not a question whether our great-great-grandfathers were right or wrong; the thing they defended no longer exists .

Individualism and control are both new, and the case for both needs to be completely restated."[1.]

State Socialism:

The socialist would solve the problem of economic inequality by eliminating the institution of private property and substituting an entirely new economic and political structure. Socialistic ideas vary greatly but the abolition of private property and the control of the increments of production seem to characterize all socialistic thought. Competitive industry is considered wasteful and large-scale production is thought to be the cause of combination and monopoly. In order to overcome this,wealth is to be distributed only to those who would labor for it, while interest and rent are to be abolished. What an ideal plan this would be if it only were feasible.

Many communities have been established with the idea of carrying out these ideals of brotherly love and not entirely without success, but these enterprises were comparatively small and of little significance when contrasted with modern society. The Oneida Community was an outstanding example in the United States but its influence upon the affairs of the nation was of little significance. Complete state socialism hardly is conceivable under present conditions, but a study of state socialism as practiced in Germany and Australia may be of some value in determining whether or not complete

1. Reference 18, Page 30

nationalization of industry would be desirable and successful in the United States.

It is doubtful if there is any government in the world that functions as systematically as the German government. Prior to the World War its success was particularly notable, and many other nations have adopted similar practices, particularly the system of protecting workers by means of social insurance. The head of the German government was a sovereign who was well versed in the art of governing. Not only was he a brilliant ruler, but the entire administration was composed of persons especially trained for their respective positions. The present government probably does not retain all the characteristics of the previous governments but it is a highly efficient organization. It is like a big corporation, each official has chosen a particular field for his life work and he becomes more efficient as time goes on and he gets more experience.

The operation of industry by the German government has proved to be a profitable venture, at least this was true up to the time of the World War. In building up industries within the country, it became necessary to find a market for the goods. This problem was solved by forming pools or trusts which were known as Kartels. These Kartels were in the nature of selling agencies which sold goods for the producers and thereby eliminated the costs of selling under competitive conditions. The German government encouraged the formation of Kartels and in

many instances was a party to them.

In the United States the people seem to be hostile to anything that appears to be bureaucratic. The mere mention of socialism or monopoly to most Americans arouses a feeling of fear and distrust. Perhaps this is due to the unfortunate experiences that the people of the United States have had with private monopolies. It should be remembered that German monopolies are carried on for the benefit of the nation while the monopolies in the United States are carried on for private gain. The only combinations that are legal in the United States are those authorized by the Webb law which permits the formation of combinations for the purpose of carrying on foreign trade. This measure was felt to be necessary in order to conduct foreign business with a minimum expense and to meet successfully, competition from combinations from other nations .

The social democratic party is one of the leading parties in Germany today and its influence is spreading to other countries on the continent. The nationalist party has exerted a strong influence and has succeeded in restraining the socialists from carrying their nationalization programs to extremes. In cases of crises, as in the case of the late World War, the nationalist party has been dominant.

As stated before, the influence of socialism has been less apparent in the United States. We should not, however, conclude that all socialistic doctrine is fallacious. The wastes of competition, the evils of monopolies, and the unequal

distribution of wealth would all be eliminated in the socialistic state, at least this is what socialists contend. We must not overlook the fact that many of our best laws were originally considered socialistic. Inheritance taxes, social insurance, old age pensions, government operation of railroads, and numerous other laws and policies have socialistic origins. In conclusion we may say that if economic developments warrant the adoption of socialistic policies, we should adopt them as soon as possible and not reject them merely because they are socialistic. On the other hand, we should be sure that the remedy we select will cure our economic ills. Socialism is a wonderful ideal but many who admire it doubt its expediency.

Syndicalism:

Socialists and syndicalists have some convictions in common. They both would destroy the present capitalistic system and substitute one of their own. Syndicalists, however, would destroy the power of the state, while socialists aim to increase it. The syndicalist contends that socialism is merely another form of capitalism which would place political control in the hands of a few and give little chance to the worker. Sabotage and revolution are the methods used to obtain control for the workers.

Under this system industry would be placed in the control of the workers themselves, they being organized by industries rather than by trades as at present. It is difficult to

understand how a system of this kind could possibly work out satisfactorily. Even though the workers were successful in overthrowing capitalism, it is hard to conceive how they could administer their program without some system of supervision.

S yndicalism is essentially a French movement and its American contemporary is the I. W. W. Its activities in the United States have caused some alarm because of their destructive character but as a possible substitute for our present economic order, it is likely to be of little prominence.

Gild Socialism:

Gild socialism is an English institution and has some of the characteristics of both state socialism and syndicalism. It does not approve of the centralized system proposed by the advocates of state socialism but it would have some administrative system. The modern evils of the factory system and standardization are condemned, and control by the workers is their aim. The desired plan seems to be a government by trade unions. The proponents of gild socialism are quite willing to achieve their goal in a peaceful manner and in this respect they differ materially from the syndicalists.

Even this modified plan hardly would prove satisfactory as a substitute for our present system.

Anarchism:

Anarchism is similar to syndicalism and gild socialism. It seeks to establish the supremacy of the worker and to simplify industry to such an extent that our complicated system of exchange would be unnecessary. Revolutionary

methods would be employed in reaching this objective.

As an improvement over our present system of industrial control, anarchism does not seem to have as good prospects as the systems previously discussed. The revolutionary methods employed by anarchists have hindered their cause materially.

Summary:

The systems which we have discussed are movements that have attracted the attention of some of the world's most distinguished scholars and political thinkers. With the exception of state socialism as practiced in Germany, all of the systems mentioned seem to overlook the essential element of human nature. Man is by nature individualistic and it will be the work of many generations to teach him to be otherwise.

We may therefore conclude that longer strides will be made on the path of social reform by seeking to improve our present system through the enactment of corrective legislation and the continuance of our program of education for the individual.

CHAPTER 2

THE SITUATION IN THE UNITED STATES

The Tendency Toward Combination:

Large-scale production and industrial combination are the outstanding features of industry in the United States today. By pursuing these methods, waste can be reduced to a minimum and products can be distributed at lower costs, thus reducing the price to the ultimate consumer. This is the theory offered by those who would permit the legal existence of industrial monopolies. There are, however, many who present serious objections to this theory and the purpose of this chapter is to present all phases of the problem.

Some people contend that combinations are mainly an attempt to secure monopoly profits by raising prices, and that they should be eliminated. Others say that they are a more efficient business organization, and that therefore they should be permitted to exist subject to governmental regulation of prices, etc. There is still another group who would have the government own monopolistic industries, claiming that such industries cannot be successfully regulated and that competitive conditions are not likely to be restored.

The tendency toward combination seems to predominate in periods of declining prices and smaller profits. Combinations

did not become an important part of economic life in the United States until sometime after the Civil War. The intense competition of that time made it necessary for business organizations to combine. The same condition came into existence after the World War and we are still affected by it. The difference between the situation of today and that of sixty years ago lies chiefly in the attitude of the government and of public opinion. The term trust or monopoly always has created a feeling of uneasiness and distrust in the minds of the people of the United States and it is largely for this reason that anything resembling combination has been resented. Public opinion now, however, seems to have changed and it is possible that it will favor big business provided big business can conduct its affairs in such a manner that the consumer and the worker, as well as the capitalist, will benefit by the economies effected. It is probable that government regulation will be necessary in order to overcome the element of human nature.

Large-scale Production:

Before the days of the industrial revolution little was thought of large-scale production. This came as a result of the introduction of the factory system and the invention of modern machinery. Capital was invested in large amounts in various kinds of machinery and equipment and the capitalists soon found that the way to increase earnings was

to increase production, and thus reduce costs. When competition became too keen, it was found profitable for several producers to combine and operate as a unit, thus increasing the scale of production.

A gain in efficiency is usually the result of such combinations but in most industries there is a point of maximum efficiency. After this point is reached, efficiency decreases as the scale of production increases. This is particularly noticable in the telephone industry, where the cost of increasing the size of an exchange is greater, after a certain point is reached, than is the cost of installing and maintaining another exchange.

We may therefore say that large-scale production will replace small-scale production only up to the point where the law of diminishing returns begins to function. An exception may be made in the case of some of the natural monopolies where competition has been found to be harmful. While it has been found desirable to eliminate competition in these instances, some of the companies having these monopolies have found it more economical to produce in several small plants than in one large plant. As was stated above, this is the situation in the telephone industry.

If industries having this characteristic were to be nationalized, the government would not be able to reduce operating costs to any extent by establishing larger producing plants.

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Horizontal Combinations:

Industries may combine either horizontally or vertically. Horizontal combinations are those that consist of plants which produce the same article. A vertical combination is one that comprises concerns producing different articles, all of which enter into the same finished product. If such combinations as those mentioned acquire a practical monopoly over the production of a product, they are generally known as trusts.

As the size of the plants in a given industry grow, the number of plants decreases. Allowance, of course, should be made for increasing demand due to the natural growth of population. The result of this process is that in a comparatively short period of time only a few producers will continue operations. It is when this point is reached that the danger of monopoly arises. With only ten or fifteen operators in the field, there is a great temptation to combine in order to control production and prices. In cases like this,the producing establishments usually remain intact and the management is combined under one administration.

Professor F. W. Taussig cites the American Sugar Refining Company as a typical example. "A modern refinery is a huge concern, costing a couple of millions of dollars, and putting out ten thousand, even fifteen thousand, barrels of sugar a day. Yet there are limits to its size. Beyond a certain point, enlargement no longer adds economy in operation.

When an output beyond this capacity is called for, a second refinery of the same kind is erected, and so on until the total supply is provided. All these refineries, however, may be managed from one common center, with at least possibilities of economy. Their supplies may be bought in common, and distributed among them in such a manner as to insure continuity in operation and the minimum outlay for transportation. This last factor, economy in transportation, is of great consequence, where the chief material (raw sugar, in this instance) comes from great distances, and being rapidly worked up, must be continually and systematically replaced. Machinery may be made identical, or "standardized," in the different works, and its repair and replacement thus facilitated. These and other possible economies may be offset, to be sure, in whole or in part, by the inherent difficulties of large-scale management--notably the increasing difficulty of supervision. Experience, and especially the test of competition, can alone settle with certainty whether the advantages offset the disadvantages."[1.]

Vertical Combinations:

The vertical combination unites the various stages in the production of an article. The trend toward this form of combination is not so great as that toward horizontal combination. The United States Steel Corporation and the International Paper Company are promonent examples of vertical combinations, although they have some of the characteristics of the horizontal form.

1. Reference 5, Page 59

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Professor Taussig characterizes the United States Steel Corporation as a typical example of vertical combination. "Itself a union of previous combinations which had adopted the same method on a scale already great, this corporation owns vast mines of iron ore, of coal, and of limestone. The mines are situated chiefly on the shores of Lake Superior, the coal mines chiefly in Pennsylvania. Most of the ore is carried to the coal, and smelted in the great iron-making district of which Pittsburgh is the center; but in part the coal is carried north and west, meeting the ore, to be smelted at various places on the Great Lakes. To transport these materials, the corporation has its own railways in the Lake Superior region and in the region from Pittsburgh to Lake Erie; and it owns a great fleet of steamers and barges on the Lakes. The pig iron, made in its own furnaces, is converted into steel of various shapes in its own steel mills. The further operations of converting the steel into rails, structural and bridge shapes, plates and sheets, tubing, and wire, are carried on in still other establishments. In no other industry, and nowhere else in the world, has the experiment of vertical combination been conducted on so great a scale."[1.]

The Results of Combination:

The success or failure of combination should be judged by its effect upon the public interest rather than by the amount of extra dividends earned. It is to be expected, of course, that these combinations shall be entitled to a reasonable profit on their invested capital.

1. Reference 5, Page 61

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The results of combination have been very beneficial to the public in many instances. Combinations in the automobile industry have tended to lower prices by the introduction of newer and more efficient methods of manufacturing and distributing their product. Competition, however, is still a vital factor in this industry, and it remains to be seen whether or not competition will be restricted. The number of automobile manufacturing concerns is decreasing, while the size of individual concerns is increasing very rapidly. If the number of manufacturers is reduced to a very small number, there may be danger of an automobile trust, but at present there are many obstacles in the path of such a movement. In the first place an automobile is not an absolute necessity to most people, and in the second place there is such an abundance of talent and capital seeking opportunities for profit, that the elimination of competition seems like an almost hopeless task.

There are, however, many instances where combination has led to monopoly and in these instances the public has suffered. Combinations that are formed for the purpose of eliminating cutthroat competition and to obtain the benefits of large-scale operation and thereby promote economic stability, are of distinct value to the public. Combinations formed for the purpose of obtaining promoters' profits or monopoly profits are detrimental to the public, as are many of the combinations formed merely for the sake of giving prestige to the owners of them.

Conflicting Interests:

The conflicting interests of capital and labor have been of paramount importance ~~since~~ ever since the factory system became a part of our economic structure. The seriousness of the conflict has depended upon the attitude of individual employers and workers. In prosperous industries where employers have been generous in their distribution of wages, and have granted favorable working conditions, workers have remained contented. On the other hand, relations have been less satisfactory in places where prosperity has not prevailed, and also in places where there has been prosperity but an unfair distribution of wages.

Present conflicts between capitalists and workers are largely the outcome of old prejudices and grievances which have persisted since the conflict began. New developments, of course, give rise to new causes for discontent, which also must be considered. Perhaps the chief cause of conflict is the attitude of indifference on the part of capitalists, and the lack of education on the part of the worker.

In more recent years, a new interest has entered the conflict namely, the public interest. More will be said of the public interest in a later chapter, but it should be noted here that the public has a vital interest in the relations between capitalists and workers. If civilization and industry are to advance, the problem of conflict of interests

must be studied and a practical solution found. Absolute satisfaction and contentment never will be achieved unless human nature can be changed, but satisfactory means of arbitration can and should be developed.

The Wage-earner:

The position of the wage-earner in the United States is that of a free man. The enactment of the thirteenth amendment to the constitution brought this condition. Previous to the adoption of this amendment, a man could sell himself into slavery, but now involuntary servitude is illegal and a man is free to leave his place of employment if he so desires.

The wage-earner's chief reason for working is to obtain wages. If he is to be satisfied, these wages must be adequate to support him and his family with at least the ordinary comforts. The worker also expects steady employment, or wages high enough to take care of him during periods of unemployment. He expects favorable working conditions, including fair treatment from his immediate superiors. He further asks to be permitted to have something to say in regard to working conditions and to be given an opportunity for promotion.

The laborer has sought to improve his condition by means of collective bargaining. His right to do this has been questioned and this problem has attracted world wide

attention, and has been the cause of many bitter political and industrial struggles.

The history of collective bargaining dates back to the time of the merchant gilds and the medieval charters which were given to the townspeople of that time. These charters were contracts whereby the rulers granted certain privileges in return for a money consideration. Most important of these privileges was that of freedom from serfdom. If a serf had been in a free city for a year, he became a free man. Thus we see that as far back as medieval times, man made use of collective bargaining and gained his freedom.

Labor's early attempts at collective bargaining were soon viewed with suspicion, and it was not long before their associations were looked upon as conspiracies and were prohibited by law. These views, however, were not without some foundation. In order to have collective bargaining, their must be a restriction upon individual bargaining. The members of the association must abide by the decisions of the majority. In order to obtain harmony within the associations, it often was necessary to restrict membership. This had a serious effect on both the members and the non-members.

In England, in the eighteenth century, combinations of laborers for the purpose of raising wages were considered as illegal conspiracies and were prosecuted as such. The economists of that time contended that wages were controlled

by the supply of labor and by the supply of capital available for the employment of labor. Any attempts to interfere with these natural laws were considered unnecessary. They were forbidden by the statute law as well as by the common law. It was not until 1824 and 1825 that these laws were repealed and labor was conceded the right to combine. In 1871, trade unions were declared not to be illegal combinations in restraint of trade, and in 1875, labor was declared not subject to the criminal conspiracy laws. In 1906 labor was finally exempted from the law of civil conspiracy also.

In the United States the situation was a little different. It was never conceded by labor that combinations to raise wages were unlawful conspiracies.. While there were some convictions made by juries, public sentiment seemed to favor labor unions. Labor unions in the United States were not quite as fortunate as those in England because in England, the entire conspiracy law was wiped off the statute books as far as labor was concerned, while in the United States, the unions had only public opinion in their favor. It might be added, that in the United States, the working class was better off than in Europe because free land in this country had a tendency to keep wages up to a more comfortable standard. If an employee was dissatisfied with his employment, he could leave it and take a farm which the government would give him for the asking.

The power of labor has increased enormously and this power is being used now in an attempt to establish a closed shop.

THE SITUATION IN THE UNITED STATES

While the number of laborers who are organized comprises a small minority of the total number of workers in the United States, their power is great. (It is generally conceded that about 18% of the workers are organized in the United States.) Many non-union workers support the organized labor movement.

In considering a program for the nationalization of industry in the United States, we must carefully consider the position of the wage-earner, both the organized and the unorganized.

The Capitalist:

We are living under an economic system of which capitalism is the basis. The capital used is the result of past saving on the part of individuals, and is used by them to carry on their industrial enterprises.

The capitalist asks that the government protect him in order that his investment may remain secure, and that he may have an opportunity to enlarge his business. He expects that the men who are conducting the industry which he has financed will act in good faith and do the work to the best of their ability.

There are many and varied opinions as to what the rights of capital should be. Some people say that it should be allowed to be used for the entire benefit of the capitalist without any regard for the nation. Others claim that it s hould be permitted to earn a fair return, while a more

radical group claim that it should be taken out of private hands and placed under the control of the state. As we study the problem more closely, we find that there is some basis for all of these contentions, and that if the nation is to prosper, an economic system embodying all of these theories and many more, will have to be considered.

Capital is necessary to modern industry, and industry is vitally important to the welfare of the public. As the modern capitalistic system becomes more intricate in its structure, the necessity for government interference becomes more apparent. The action on the part of the governemnt should be taken only after careful study of all phases of the problem, but this action should be taken whenever there is any intrusion on the part of capital upon the interests of the public.

Monopolies--Development:

There is some difference of opinion as to what constitutes a monopoly. An absolute monopoly rarely exists but for ordinary purposes we may say that any concern that can set its own prices and maintain them constitutes a monopoly. From an industrial standpoint a monopoly need not be absolute in order to be effective. When a monopoly is absolute, the monopolist fixes his price at the point that will yield him the highest net profit. Opportunities for such profits are rare, at least for an extended period of time. Copyrights and patents give

their holders an opportunity to become absolute monopolists for a limited period of time, but even under these circumstances there is a chance of competition from imitations. The supply of diamonds is considered very limited and the owners of the mines containing this restricted supply are said to have a monopoly. They are, however, in constant danger of losing control because of the possibility of other people discovering new sources of supply. It is also possible that some day someone will discover a process for the manufacture of diamonds.

Our problem concerns chiefly industrial monopolies which are more commonly termed trusts. The trust movement in the United States began on a large scale about 1879 when the Standard Oil trust appeared. A few years later this trust controlled about ninety-five per cent of the refining capacity of the country. When producers in other industries noticed the success of the oil trust, they also attempted combination in the form of trusts. The American Cotton Oil trust came in 1884, the whisky trust in 1887, and many others followed. The control of the companies involved was vested in the hands of trustees who held a majority of the stock and consequently could elect all officials.

Perhaps a few words should be devoted to an account of the pools which preceded the trustee device mentioned above. The earliest pool was formed in the brass industry in 1853. Several years later, in 1861, a similar combination was formed in

the cordage industry. Pools became more common after the Civil War, due to the keen competition which prevailed at that time because of the rapid growth of business and the development of large-scale production. The object of the pools was to curtail competition and to raise prices. On the whole pools were not a success. In the first place they were illegal, which made the agreements between members non-enforceable at law; and in the second place there was dissention among the members, which made their success only temporary.

The trustee device, which was mentioned previously, followed the pool as a means of combination. The public soon became discontented with the monopolistic tendencies of these trusts and many laws were passed in an attempt to eliminate such combinations. In 1890 Congress passed the Sherman Anti-trust Act, which prohibited all monopolies or attempts to monopolize.

When this law was enacted, producers were forced to seek a new means of combining in order to comply with this new law and, at the same time, maintain their monopolistic position. They accomplished this by establishing what were called holding companies. These holding companies did just what their name implies, they held the stock or property of the companies that wished to combine.

Except in one or two isolated instances, the holding

company was not legal until May 1889. At that time the state of New Jersey passed an amendment to its corporation laws which provided that corporations existing under the law of 1875 could purchase "the stock of any company or companies owning, mining, manufacturing or producing materials , or other property necessary for their business."[1.] This stock could be paid for with shares in the holding company. A few years later, the state laws were further amended so that corporations could "purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such stock may exercise all rights, powers and privileges of ownership, including the right to vote thereon."[2.]

When other states saw that New Jersey was receiving a very excellent income from fees paid by incorporators, they soon began to adopt similar legislation. While the holding company had its merits, most of the combinations made, were in the form of property owning trusts. If a large corporation wished to combine with, or absorb other corporations, it would form a holding company, which would acquire all the stock. The holding company would then convey to the large corporation, all of the property belonging to the other corporations. The other corporations would then be dissolved and leave the large

1. From amendments to New Jersey Corporation Laws
2. " " " " " " "

corporation in possession of the property.

Some trusts were very successful, at least from the owners' standpoint, while others hardly held their own. There were some combinations that were absolute failures. In 1904 the famous Northern Securities case was decided by the Supreme Court. The court held that a combination of competing railroads in the form of a holding company was a combination in restraint of interstate and international commerce, and therefore illegal. This ended the legal existence of the stock holding company form of trust and it became necessary for combinations to resort to the property owning form of trust in order to avoid conflict with the law. This form of trust succeeded in evading the law until 1911 when the tobacco merger was held to be illegal, and the Standard Oil Company of New Jersey was held to be a combination in restraint of trade.

The development of trusts in the United States has been retarded greatly by legal conflicts. Public sentiment has always opposed them and this undoubtedly has influenced the legislature to enact laws restricting and finally prohibiting them. It is not the act of combining, but rather the purpose of the combination, that is illegal.

Natural Monopolies:

There are certain industries which, by their nature, are monopolistic. These are termed natural monopolies by economists. They generally include such industries as telephone and telegraph, street car and bus lines, post offices, railroads, and other industries commonly called public service

industries. Competition is not likely to increase efficiency in these industries. Their existence was made possible by authority of the government, which granted them special privileges and franchises. A telegraph company, for instance, must have authority to erect poles for its wires, and a railroad company must have the right to run its tracks over land belonging to many different people. These grants can be obtained only with the assistance of the government.

Public service industries need not necessarily be owned and operated by the government because they require authority from the government in order to operate, but they should be subject to regulation because they tend to become monopolistic.

It may be true that there are other industries which may become monopolies and are not classed as public service industries, but if there are, these also should be s ubject to regulation. The list of industries which are classed as public utilities is constantly increasing. "When a bus - iness of real public importance can only be carried on advantageously upon so large a scale as to render the liberty of competition almost illusory, it is an unthrifty dispensation of the public resources that several sets of costly arrangements should be kept up for the purpose of rendering the community this one service. It is much better to treat it at once as a public function; and if it be not such as government itself could beneficially undertake, it should

be made over entire to the company or association which will perform it on the best terms for the public."[1.]

Industries will continue to be developed through private enterprise until it is no longer in the public interest to encourage competition or to permit monopolies to remain unrestricted in private hands. When we reach this stage, it will be necessary for the government to regulate them. Some of the nations of Europe have found it advisable to own them either partly or entirely. Perhaps this method will be adopted in the United States, but if it is, it is likely to be a very slow process.

The Evils of Monopolies:

The outstanding evil of monopoly is the tendency to restrict production in order to maintain monopoly prices. A monopolist will attempt to fix his production at a point which will yield him the highest total net income. It must be remembered that this can be done only when there is absolute monopoly. It must also be remembered that a monopolist can control the supply of an article but he cannot control the demand. Consequently he must find what the demand will be at various prices, and then choose the one that will be most remunerative to him. The effect on the ultimate consumer is obvious, he must pay a monopoly price or go without the goods.

It is difficult to find men who are capable of administering such a vast undertaking as a large monopoly. Many

1. Reference 5, Page 422

men,who could fill such an important position, have refused because they prefer to operate their own business, rather than work for somebody else. Then again, there are men with ability who would prefer to devote their time to the betterment of humanity, or perhaps accept some high government position such as that of a cabinet officer or ambassador, and thus attain social distinction which would not come to the head of an unpopular monopoly.

If an industry no longer finds it necessary to meet the demands of competition, it soon loses its stimulus to make improvements in its methods of production and distribution. There is a natural lack of incentive to make and adopt new inventions when profits seem to be assured without doing this .

The ordinary industrial monopoly often finds it difficult and expensive to maintain its position. Competitors are constantly springing up and they are a serious menace to the monopolist. They either must be bought outright or they must be forced out of business by competitive methods . The former is the easiest and the safest but it is likely to be very expensive, particularly if the competitors insist upon high prices for worthless plants.. The latter method has been employed in many cases and usually with success, due to unfair methods. The cost, however, will be high because there is always a large amount of expense involved in a price cutting campaign.

A monopoly is also confronted with a very difficult administrative problem in addition to the problem of finding capable administrative officers. Inasmuch as the work of conducting the operations in the various plants, which are controlled by the monopoly, is done by employees rather than by owners, as is the case in most noncompetitive industries, it is necessary to have an enormous system of control. This is very apt to become burdensome and cause inefficiency. It has been said than a man will work ten times as hard for himself as he would for others. While this may be exaggerated, the principle is logical and seems to be applicable to the industrial monopoly or any enterprise which has become too large for efficient administration.

Some of the foregoing evils are particularly detrimental to the public interest, while others restrict the position of the monopolist himself. In the long run, however, an unrestricted private monopoly is likely to be costly to the consumer.

The Benefits of Monopolies:

The benefits of monopoly are largely those of large-scale production and large-scale management. In some industries, the efficiency of monopoly is so well recognized that its existence has been legalized. These industries are the so-called public service industries which operate under exclusive franchises and, in some cases, are owned

by the government but generally operated by private individuals or corporations. The subways in metropolitan Boston are owned by the city and state and are leased to the Boston Elevated Company. In the case of natural monopolies similar to the above, the wastes of competition are so apparent that it is in the public interest to eliminate them.

The monopolists claim some advantages in addition to those of large-scale operation. Competitive concerns must necessarily spend a large amount of money in selling their products. They must employ high salaried salesmen who, in addition to their salaries, incur considerable expense when traveling. They must also appropriate vast sums of money for advertising their products. The monopolist can reduce these costs to a minimum because he has no competition. If his product is one that has an elastic demand, he must, of course, spend enough on advertising and sales promotion to promote and maintain a demand sufficient to keep his plants operating to capacity or to the point which yields him the highest net profit.

The monopolist often can save unnecessary transportation costs which must necessarily be paid under competitive conditions. Most of the benefits of monopolies are those that accrue to the advantage of the monopolists themselves. It is difficult to find any advantages that are peculiar to a monopoly, that are not found in industries of similar size operating under competitive conditions. The evils and dis-

advantages of monopolies seem to outweigh any benefits, at least as far as the public interest is concerned.

Outstanding Examples in the United States:

One of the most interesting examples of combination in the United States is that of the Standard Oil Company. Almost from its very beginning, its history is one of successive mergers or combinations. It was found by Mr. John D. Rockefeller in 1865 and he has been identified with it ever since that time. At that time the firm name was Rockefeller and Andrews, Mr. Andrews being a partner and the mechanical brain of the company. The name changed several times until June 1870, when the Standard Oil Company of Ohio was incorporated with a capital stock of one million dollars. This was a company of modest size and it had many competitors.

It soon became evident that large-scale production was necessary to the success of a concern in the oil business. The story of the methods used to eliminate competition is very fascinating but space will not permit its repitition here. It took the Standard Oil Company about nine years to acquire control of over ninety per cent of the refining business of the country. Its most effective method was that of obtaining discriminating rates from the railroads. This was done by forming the South Improvement Company which bargained with the railroads for low rates in return for the privilege of carrying large amounts of freight. The independent producers

objected to the methods of this company and their objections were sustained, but the S tandard Oil Company continued to receive favors in the form of rebates.

The first serious legal setback was received in 1892 when the trust agreement under which the company was organized, was declared to be illegal. A plan known as the community of interest plan was then adopted but this also met with legal difficulties and in 1899 it was decided to form a holding company under the laws of New Jersey. This form of organization lasted until 1911 when it was ordered dissolved because it was declared to be in violation of the Sherman Anti-trust law. The dissolution took place, but the report of the Federal Trade Commission revealed the fact that while the various subsidiaries of the Standard Oil Company were managed separately, there appeared to be little or no competition among them.

The history of the oil monopoly is an interesting one to read but lack of space makes it necessary to be brief here. An interesting account may be found in "The Trust Problem in the United States", by Eliot Jones, Ph. D. It is interesting to note that the monopoly of the Standard Oil Company was maintained by controlling means of transportation rather than by controlling the source of raw material. An uncertain element always has characterized the production of oil and it was for this reason that the Standard Company found it desirable to effect a monopoly by other means.

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Many of the economies of the Standard Oil Company were those of large-scale production. They were enabled to obtain lower rates because they were in a position to give the railroads a large amount of business. They operated many large refineries situated at advantageous points throughout the country which must have permitted them to eliminate the expense of cross-freights. When the pipe line replaced the railroad to a large extent as a transporter of oil, the Standard Company had large resources to invest in pipe line transportaion systems. This they did and the benefits received more than repayed the cost. All these factors indicate efficiency and economy and they should be a benefit to the ultimate consumer.

The unfortunate phase of the whole situation was the desire to kill competition. The price wars, particularly in the sale of gasoline, have ruined many independent operators. The Standard Oil Company had a practical monopoly together with enormous resources and consequently could lower its prices in communities where competition threatened. The loss sustained in a competitive community would be offset by the excessive earnings in other communities.

The Standard Oil Company always has had brilliant managing talent and its record of earnings is a very fine one. Many of their methods have been severely criticised but it is hard to determine whether or not the consumer would be very much better off if this concern had not survived. The government should seek to curb any attempt at monopoly gains,

but it should try to encourage large-scale operation in conjunction with a conservation program in the petroleum industry.

The American Tobacco Company:

The American Tobacco Company was a property owning trust which was incorporated in New Jersey in 1890. It was a consolidation of five of the leading concerns of the time of which W. Duke Sons and Company was the most prominent. Mr. James B. Duke was the controlling factor in this concern. The purpose of the combination was to eliminate competition and thereby reduce the heavy selling expenses peculiar to the cigarette business. It is estimated that this trust controlled ninety-five per cent of the nation's output of cigarettes.

The tactics resorted to were similar to those of the oil trust. In the manufacture of cigarettes, machines are an important factor. The trust, therefore, found it desirable to get control of the best machines and thus prevent competitors from using them. Another policy of the trust was to purchase the plants of successful competing companies and close them up. Sometimes the brands of these companies were used, but just as often they were not used.

In 1891 the American Tobacco Company purchased the National Tobacco Works which was a producer of plug tobacco. An attempt was made to monopolize the plug tobacco industry

but without success. A price cutting campaign followed and this cost the American Tobacco Company about three million dollars in four years. There was much stubborn opposition, but in 1899, the Continental Tobacco Company, which was controlled by the American Tobacco Company, purchased, at a very high figure, the Union Tobacco Company, the outstanding large competitor and thereby gained a dominant position in the plug tobacco industry.

The next step was to get control of the snuff business. This was accomplished by means of a successful price cutting campaign against the Atlantic Snuff Company, the largest competitor in the field. The result was the formation of a new corporation, the American Snuff Company, on March 12, 1900 in the state of New Jersey. This corporation combined the interests of the American Tobacco Company with those of its largest competitors.

"By 1900, therefore, the Tobacco Combination had reached a dominant position in the manufacture of all the important branches of tobacco except cigars. It produced 92.7 per cent of the output of cigarettes; 62 per cent of the plug tobacco; 59.2 per cent of the smoking tobacco; 50.5 per cent of the fine-cut tobacco; and 78.0 per cent of the snuff (80.2 per cent in 1901)."[1.]

The American Tobacco Company's venture into the cigar manufacturing business proved to be a failure except in the case of little cigars. This is attributed to the fact that

1. Reference 4, Page 131

cigar manufacturing does not lend itself readily to modern large-scale production methods. Little cigars can be made satisfactorily by machines, but the ordinary cigars must be made by hand if they are to meet with the smokers' approval. When this condition exists, it is difficult for any single concern to obtain a monopoly of the business. Little capital is necessary for the establishment of a plant and consequently, the number of plants tends to increase. It was this condition that made it impossible for the tobacco trust to gain effective control of the cigar business.

In 1901 the capital structure of the tobacco trust was revised and the Consolidated Tobacco Company, a holding company, was formed. The purpose of the revision was the acquisition of additional capital for expansion, particularly in foreign markets. It is also interesting to note that this revision enabled approximately six men to control the entire combination. The holding company continued until 1904 when the Northern Securities decision was rendered. As the Consolidated Tobacco Company was similar to the Northern Securities Company in form, it seemed advisable to reorganize the tobacco company in order to avoid possible conflict with the law. The holding company merged with its subsidiaries and the American Tobacco Company was formed. This company dominated the tobacco industry

until 1911, when it was ordered dissolved by the Supreme Court.

The activities of the tobacco trust were not confined to production. They extended to the field of distribution as well. Various tactics were resorted to in an attempt to control the jobbing and retail trades, and in most cases, they met with success. The growth of the United Cigar Stores Company was due, to a large extent, to the fact that it was a part of the trust, the American Tobacco Company having a controlling interest in it.

It is difficult to determine whether or not the monopoly was justified from an economic point of view. The ability of the trust to establish and maintain its monopolistic position may be attributed to many factors but its ability to purchase and discontinue competitive plants seems to be the outstanding one. This method of eliminating competition undoubtedly was expensive but it seemed to bring the desired results. Large-scale production and distribution also were important factors in maintaining the monopoly. The most harmful method employed was that of price discrimination which was practiced quite extensively.

It is difficult to gather statistics which will clearly indicate whether or not the cost of tobacco and its products to the consumer was greater under monopoly conditions than under competitive conditions. Such a study would be

interesting but its results may not be conclusive. The tremendous cost of purchasing and destroying competitive plants may have been offset by the economies of large-scale production and distribution but this would be difficult to determine. The best indication of the effect of monopoly control may be obtained from a study of the earnings of the trust. In making this study careful consideration should be given to invested capital and to any discrepancies that might exist between book profits and actual profits. A large part of the common stock was water but regardless of this fact, handsome dividends were paid on the entire capitalization. "The reorganized American Tobacco Company, for example, earned on its common stock during the years 1905 to 1910 an average of over 50 per cent; and paid dividends averaging over 29 per cent."[1.] The unfair practices and the huge profits of the trust seem to justify its dissolution in the interest of the public.

Public Sentiment in Regard to Monopolies:

The recent trend of public opinion has been toward a more favorable attitude in regard to monopolies and potential monopolies. The benefits of large-scale production and distribution have become more apparent and are being recognized as a means of progress in economic activity. It was found that the dissolution of trusts by judicial

1. Reference 4, Page 163

decree, in many cases, did not bring the desired results. The wastes of competition tend to increase the costs of goods to the ultimate consumer and, consequently, there is little to be gained from dissolving the trust.

Public opinion now recognizes the need and the economy of big business, but it also recognizes the need for regulation in order to protect the public interest. A business need not be dangerous because it is large, but it may become so if it is permitted to continue without regulation. The World War proved that there was need for big business and since that time there has been little public demand for the unreasonable dissolution of large corporations. Large companies have issued stocks and bonds in small denominations in order that the small investor might participate in the earnings. Various other plans for similar purposes have been carried out. In some cases a program of public education has been inaugurated. In each case, the purpose has been to obtain the cooperation of the public and to convince consumers that large corporations and other forms of large business enterprise, tend to reduce ultimate costs.

Public opinion finds its way to the judiciary, although it is usually a slow process, and is then expressed in the form of judicial decision. This was particularly apparent in March 1920 when the Supreme Court decided that the dissolution of the United States Steel Corporation would not be of any advantage to the public and therefore, it decided

against dissolution. If this decision had been rendered ten years previous to this time, it is very doubtful if it would have met with public approval. In this brief space of time, however, the people had learned that competition was wasteful and that large-scale production and distribution were economical.

It must not be assumed that the people were ready to accept the trust, with all its defects, as the ideal business unit. The public accepts the large corporations because they are usually the most efficient. There is, however, a strong demand for careful supervision and strict regulation by the government. Congress has taken care of this by establishing various commissions which are essentially administrative bodies. The Interstate Commerce Commission and the Federal Trade Commission are outstand- examples of such administrative bodies. The powers of these commissions is being extended constantly. The Interstate Commerce Commission came into existence in 1887 with very little power. Its powers and duties have grown steadily since that time and today it is one of the most powerful bodies in our national government. (See chapter 8 following.)

The present trend of public opinion in the United States, in regard to monopolies, is favorable, and if an effective program of regulation can be carried out, it should

be possible to enjoy the benefits of large-scale production without fear of unfair monopoly practices.

C H A P T E R 3

FUNDAMENTAL RIGHTS AND DUTIES OF SOCIETY

Fundamental Conceptions:

In order that we may approach properly the problems of nationalizing industry, we should understand the fundamental principles upon which our modern economic structure is founded. There are certain basic rights and duties upon which society is built. Human nature is largely individualistic and our present form of society is based largely upon individualistic principles.

The true supporters of absolute individualism advocate a state which does nothing in the way of regulating industry. Business transactions are considered strictly private affairs and should not be subject to government interference. The supporters of socialism entertain an entirely different viewpoint. They take the opposite stand and advocate the establishment of a state with complete control. Government ownership and operation is their ideal. It seems fairly certain that neither ideal can be achieved in the near future, at least not in the United States. Our present program is in the nature of a compromise and future programs are likely to be of a similar nature, although the present trend seems to be toward further

government supervision, if not absolute government control.

There are two kinds of rights which exist under an individualistic system. These are human rights and property rights. In the exercise of these rights there are, however, certain duties involved. "The underlying theory of rights of person and property is the theory of a mutual limitation of liberty; no one may use his liberty of property or person to injure another."[1.] A man has the right to live, but it is his duty to respect the similar right of his neighbor. A man is generally conceded the right to earn a living, but the world does not owe him a living. He must work for it and earn it. An employer has the right to open and close his shop as he sees fit but he must observe certain moral and legal obligations to his employees. He must not keep his shop open more than a certain number of hours each day, he must protect his employees from dangerous machinery, he must not pay less than the fixed minimum wage in some states, and he must observe a great many more restrictions which society has placed upon him.

Under our present individualistic system, an individual has the right to acquire or dispose of property to his own advantage. He need not necessarily perform any service in order to acquire property. He may inherit it or it may be given to him in some other manner. A business transaction is considered to be the affair of the persons partaking in it, the advantage being in favor of the one who can drive

. Reference 18, Page 36

the hardest bargain. Social regulations, of course, must be observed. Theoretically each transaction is a mutual bargain and all parties thereto should profit by it.

It is only when individuals or corporations attempt to control or monopolize industry to such an extent that the rights of the public are infringed upon, that social agencies should intefere. As populations increase and industries grow in magnitude, there comes an increase in the demand upon social agencies for regulation and control of industry in the interest of the public.

Historical Development:

The development of society has been influenced by geographical location, religion, intelligence, race, and character of the people. Primitive man was organized in clans which were often held together by superstition and the efforts of a strong leader. The clans resembled a large family and most of their activities were carried on in common. Our modern communistic experiments have some of the characteristics of the primitive clan. This form of social organization gave little cause for dispute over the ownership of property as most goods were the products of nature and existed in abundance.

As time went on the clans began to conquer one another and the victors became the rulers. The relations between individuals became more impersonal and it was necessary to establish a code of laws and a system of government.

"Under the Roman Empire there was a great increase in economic relations between persons of different laws and customs, and the Roman courts, in settling the disputes arising out of such relations, gradually built up a body of "law of the peoples" (jus gentium), which ultimately became more individualistic than the separate customs out of which it grew. The Code of Justinian, the ultimate embodiment of Roman law, marks a large step in the growth of individualism."[1.]

Economic activities during the Middle Ages were largely under the influence of the Church. At that time a large portion of European land was owned by the religious institutions. Individuals were accorded some rights and privileges as well as some immunities, but life under the feudal lords afforded comparatively little economic freedom.

During the period following the Middle Ages, the town came into prominence as an economic as well as political unit. Gilds also came into prominence and became an important part of the economic system. Laws were enacted to protect consumers from possible evil practices by unscrupulous producers and dealers. The just price rule was a church doctrine and was enforced by the local governments. It provided for the regulation of prices of commodities in order to provide the producer with a fair living in accordance with his station in life, and at the same time protect the consumer from

1. Reference 18, Page 23

paying exhorbitant prices in times of relative scarcity. The gilds had laws which sought to protect their members from the evils of competition among themselves. The governments protected domestic producers from foreign competition by imposing restrictions upon the latter. This period was one of excessive regulation which led to many abuses. The evils of the mercantile system led to its abandonment in favor of our present individualistic system.

Our present legal system is constantly recognizing new duties for the individual. Social legislation has tended to infringe upon the rights and liberties of private individuals. The purpose of this legislation is to lessen the burdens of the individual. All individuals have not the same ability, and unless some so-called personal rights and liberties are restricted, the less fortunate will suffer.

Relation of Religion to Economic Activity:

Religion is an important factor in creating the spirit of altruism which is so necessary to the ideal social world. There seems to be no better method of achieving social freedom than by working for a common purpose and religion seems to be an ideal purpose. There are some socialists who would adopt this method as a means of furthering the cause of socialism.

The position of religion as a social and political factor has varied from time to time. During the period from

the time of Shakespeare to about 1700, a great change took place in social and political life, particularly in England. The disappearance of the idea that social institutions and economic activities were related to common ends was the main feature of the change. Previous to this time religion had been the common purpose of society. After this period private rights and private interests became more noticeable as the object of society.

Puritanism was a great aid in the promotion of individualism and democracy. It was the foundation of many of the early American colonies. The Church no longer exercises the powerful control over members which prevailed in former periods. This is particularly true of the protestant church. The modern trend is toward the seeking of the truth by each individual in order that he may judge for himself and be guided by his own judgment. If the church is to progress in the future, it may be necessary to adopt a religion which will meet the requirements of the times but it is hard to see how a religion of this type could be worthy of its name.

There are many socialists who would abolish religion entirely but this does not seem to be a proper solution for social evils. Religion has been a strong influence in the destinies of society. It has been a good influence and should be encouraged. Whether we decide to nationalize industry partially or entirely, or whether we decide to

permit it to remain in private hands, with or without regulation, our national policy should encourage religion.

Private Property:

The right of private property is one of the most fundamental rights of our modern society. It has been attacked by social reformers who regard it as an institution which encourages an unequal distribution of wealth. Many of its opponents, however, admit its expediency in most cases, and some socialists would approve it in a modified form. The result of the Russian experiment would seem to indicate that its entire abolition was not desirable. In Russia it became necessary to alter communistic regulations and permit producers to dispose of the fruits of their labor without remitting the proceeds to the State.

Socialists contend that property should be used to promote the welfare of society. Business men claim it as a reward for their services. There is room for much constructive thought on both sides of this subject. While it is true that the right to acquire property is a necessary incentive to efficient production, it is doubtful if society as a whole will benefit if individuals are permitted to exploit our natural resources without restrictions. Social reformers attack such exploiters because they often acquire their wealth by luck or privilege rather than by consciencious effort. They also condemn them for their unjust methods of distributing wealth in the form of wages. It

is not our purpose to discuss the merits of these accusations but we should observe that unmolested exploitation of our natural resources undoubtedly will lead to serious consequences, particularly for future generations.

Public Interest:

The Constitution of the United States, in the bill of rights and in the fifth and fourteenth amendments to the Constitution, aims to protect the citizens of this country from any encroachment upon their personal rights or liberties, without due process of law. The Supreme Court of the United States has upheld the rights of its citizens in cases that have not involved a public interest. The modern trend, however, is toward a stronger recognition of public interest in business. The question as to what constitutes a business affected with a public interest is debatable and probably will remain unsolved for many years to come.

"Limitations of liberty must be capable of justification upon some theory of public interest which is both rational and regardful of individual liberty and property as rights essential to a free state.....As regards degree, the principle of reasonableness means that the burden imposed shall not be disproportionate to the benefit sought to be secured."[1.]

1. Reference 18, Page 197

FUNDAMENTAL RIGHTS AND DUTIES OF SOCIETY

Economic life in the United States has become exceedingly complex and this has tended to make the public dependent upon large business enterprises for many of the necessities of life. The police power is the means by which the government has been able to restrain personal rights and liberties when it has been deemed necessary to do so in the interest of the public welfare. A great difficulty arises when it becomes necessary to determine whether or not a specific business is clothed with a public interest. The courts have attempted to solve this question but there is still room for constructive thought. The type of regulation which should be applied depends upon the nature of the business involved.

"Such regulation depends on the nature of the business, its relation to the public, and the nature of the abuses to be feared, thus constituting, in principle at least, a very elastic group of cases, though the court points out that one does not, nowadays, clothe one's self with a public interest merely by making goods for the public.

The key to this whole class of cases appears to consist in a peculiar dependence of the public on the business, arising (1) when the service rendered shall be a necessary one, and (2) when the safeguards of competition shall either be absent or inadequate to protect those who deal with the business, giving the owner some measure of compulsory power over those who deal with him. It seems to be uniformly the sale of the product that is the determining thing, the "public"

are the customers, and their dependence is a dependence for service at need, of adequate quality at a reasonable price."[1.]

The government bases its right to interfere with industry upon the police power. This power belongs primarily to the several states but there has developed, in recent years particularly, a conflict between the states and the federal government regarding jurisdiction over cases involving interstate commerce. The federal government has no specific police power but in the exercise of some of its other powers, such as the power to tax, it receives the benefits of the police power.

"The federal exercise of the police power through positive legislation rests upon the enumerated powers of Congress under the constitution. The principle power looking to the promotion of the internal public welfare is that of regulating commerce with foreign nations and among the states. The power to regulate commerce includes the power to prohibit and suppress objectionable forms of traffic. Under this power Congress has also legislated regarding shipping and navigation, interstate common carriers, and combinations in restraint of trade." (Ernst Freund, Police Power, sec. 65.)[2.]

Congress has passed many national laws which are essentially police regulations. Among them are the Lottery Act of 1895, the Pure Food and Drug Act of 1906, White Phosphorous Match Act of 1912, and the Child Labor Act of 1916. If

1. Reference 18, Page 199
2. Reference 16, Page 297

Congress had continued to pass legislation of this type, and the Supreme Court had continued to declare it to be constitutional, it is probable that the police power of the federal government would exceed that of the states. When Congress passed legislation regulating child labor first under its power to regulate commerce and later under its power to tax, the Supreme Court refused to sustain it because it was felt that Congress had gone too far in exercising its commerce and taxing powers as means of regulating industry which should be regulated by the police power of the various states.

The Child Labor Tax Law of 1919 was intended to regulate the employment of children and was not an act imposing a tax under authority of the constitution. The Chief Justice observed: "Out of a proper respect for the acts of a co-ordinate branch of the government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting, from the weight of the tax, it was intended to destroy its subject. But in the act before us the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are

reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignity of the states.

"...Taxes are occasionally imposed in the discretion of the Legislature on proper subjects with the primary motive of obtaining revenue from them and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment." (Bailey v. Drexel Furniture Co., 42 Sup. Ct. 449, 450, 451; 1922.)[1.]

It will be seen from the above quotation that the Supreme Court disapproved the child labor laws because they felt that Congress had overstepped its authority under the constitution. If these laws are necessary in order to protect the public interest, it seems that it would be desirable to amend the constitution in order to permit the legislature to pass legislation to regulate industry when it appears that freedom of contract is detrimental to the interests of the majority.

The public interest is a vital interest and should be protected by the machinery of the federal government. It is

1. Reference 16, Page 317

a function of the legislature to pass upon economic questions and if new economic conditions make it desirable to extend further the control of industry, the legislature should be granted the power to do so under the constitution. In speaking of the police power as it now exists, Professor J. M. Clark makes the following comment: "Such..is the police power: a strange mixture of legal logic, obsolete individualistic presumptions, and real appreciation of the need of allowing the legislature elbow-room to fight the battles of the twentieth century."[1.]

1. Reference 18, Page 198

C H A P T E R 4

EXPERIMENTS IN GOVERNMENT OWNERSHIP

Russian Experiment:

Russia has been under the rule of a communistic form of government since November 1917, when Lenin and Trotzky, leaders of the Bolsheviki, succeeded in obtaining control of the government. Lenin was made president of this government. Shortly after, the natural resources were declared to be the property of the government and no compensation was given to the owners.

A plan was inaugurated whereby the land was to be divided among the people, particularly among the farmers, but the title was to remain vested in the government. In truth, however, it was the beginning of an autocratic form of government and Lenin was the dictator. Much difficulty was encountered in apportioning the land and in dividing the crops. Instead of becoming thoroughly inspired with the spirit of communism, and being guided thereby, the people considered the officials unjust and sought all kinds of means to evade their rulings.

The government succeeded in maintaining its power but this was done largely by means of force rather than by mutual consent. The next step was to nationalize industry in general. The effects were rather unsatisfactory as corruption and incompetency prevailed.among government employees as well as among the higher officials. Supporters of communistic and socialistic doctrines may contend that this condition exists in all governments and in all industries, but the appalling living conditions, and the decided lack of efficiency in Russia under Bolshevik regime, seem to indicate that complete nationalization of industry by revolutionary methods leads to chaos rather than to economic progress.

Lenin achieved great success in abolishing all traces of land ownership by the aristocracy but his constructive policy had many failings. The nationalization policy made it necessary or desirable for practically all of the industrial leaders to leave the country, which, of course, left only the less efficient persons to engage in industry under government leadership. The result was that production decreased and idleness increased.

This condition prevailed for about four years. In 1921 the government decided that, in order to encourage production, it would be necessary to permit producers to dispose of their surplus products themselves and retain the remuneration received. This program has been adopted,

and the introduction of foreign capital has been a further stimulation.

While communism, as a doctrine, has failed to a large extent in Russia, there is a strong adherence to the communistic party and to communistic principles. The youth of Russia retain a strong admiration for Lenin and for the men who succeeded him upon his death. The Russians have attempted a great experiment and seem to be enthusiastic for the success of that experiment. If it has done nothing else, it has stirred up an interest in politics among the people. This interest should inspire the people to develop political parties which will have a tendency to make the government more democratic.

The Russian people as a whole, are probably better off under the present government than they were under the reign of the Czars, but their economic progress is likely to be slow. Popular government together with an equal distribution of property was what the people wanted. They received this but as Lord Bryce has said, "Popular government has not yet been proved to guarantee, always and everywhere, good government."[1.]

We may conclude from this brief survey of the Russian experiment, that such a revolutionary method of nationalizing industry as was adopted in Russia, would not be the proper method to pursue in the United States. The economic and social conditions are so vitally different that comparison

1. Reference 10, Page 42

is difficult. The Russian people were faced with the problem of choosing betweem two evils, and they chose what they thought to be the lesser. On the other hand, the people of the United States are enjoying the highest standard of living of any nation in the world and they must be careful not to demoralize the economic structure to such an extent that this standard will be lowered. We must progress by constructive methods rather than by destructive methods.

Operation of Railroads by the United States Government:

Experiments in government ownership and operation of industry are comparatively few in the United States. There have been, however, some attempts at operation, and the outstanding example is the operation of railroads during the period of the World War and for a short time thereafter.

In 1906 a bill known as the Hepburn Bill was passed. This bill provided for the control of maximum railroad rates by a commission. As a result of this legislation, a hardship was invoked upon the railroads. The maximum revenues allowed by the commission were not high enough to permit earnings which would enable the roads to maintain a favorable credit standing. There many failures and it seems that many of these could have been avoided. The wage standard of the industry was kept at a low level when comparison is made with those of other industries. Consequently there was dissatisfaction among the employees.

When war was declared, the Railroad War Board was organized

and in December, 1917, the roads were consolidated. The operation was left entirely in the hands of government officials, to be conducted according to the best of their ability and judgment. Provisions were made for the rendering of financial aid to the roads by the treasury department for capital purposes. During the period of federal control, the roads were guaranteed a revenue each year equal to the average for three years immediately preceding June 30, 1917.

In the handling of troops, and in the movement of war materials, the plan achieved success, but in other activities, there is some question as to its efficiency. On May 25, 1918, freight rates were increased about twenty-five per cent but this does not seem out of line with price trends of that time. The mileage rate for passengers was also increased, this rate going to three cents per mile. Some serious labor troubles were encountered and much annoyance was caused on this account. It is estimated that the wage bill of the railroads was $875,000,000.00 more in 1918 than it was in 1917, and in 1919 it was increased by $600,000,000.00 more. A large part of this increase was due to an increase in the number of employees. When the government took over the roads, about 1,750,000 persons were on the various payrolls, and when the roads were returned to their private owners, about 2,000,000 persons were on the payrolls. It is interesting to note that since March 1, 1920, the number has decreased to 1,608,371. These facts would seem to indicate that government operation

required more employees than private operation.

The total cost of government operation to the taxpayers of the country is hard to determine because many claims are still pending. It has been fairly estimated at about $1,650,000,000.00 to date. This cost seems to be tremendous and opponents of government operation take advantage of this figure and point to it as an indication of the futility of governmental operation. It should be remembered, however, that we were in the midst of a war and greater things were at stake than the success of an economic experiment. The railroads were taken over primarily for the purpose of assisting the government in the winning of the war and this object was achieved. It was necessary for the government to assume the responsibility of operating all of the roads at once. This certainly was a disadvantage as the task was a huge one and could have been accomplished much more successfully if carried out gradually.

If rates had been raised so as to be consistent with rising costs and rising prices, the net cost to the government would have been much less. Perhaps there may have been a gain instead of a loss. It is true that efficiency was lacking at times but the cry during the war was for production regardless of cost.

The problem of railroad regulation and operation in the United States is still unsolved and it is doubtful if any

solution will be effected in the near future. The solution, however, should call for a program of gradual reform rather than for a complete change at once. It is probable that different railroads will require different kinds of regulation but it seems almost certain that all roads will need some kind of regulation. European governments have gone further in this matter than we have but it is possible that our political and economic structure will not permit government ownership and operation of railroads to function properly. Only time will determine this.

In his Report to the President, February 28, 1920 pp. 45-6, Walker D. Hines, Director-General of Railroads makes the following conclusions in regard to government operation. "These I regard as the results of Federal control: It made practicable a war transportation service that could not have been otherwise obtained; its unification practices have increased the utilization of the inadequate supply of equipment so that an exceptionally large transportation service has been performed in the busy periods of 1919 with a minimum of congestion; it met the emergency of the unprecedented coal strike in a way which private control could not have done and absorbed a heavy financial loss on that account which would have proved highly disturbing to private control; it provided more additions and betterments and equipment than private control could have provided during the difficult

financial period of 1918 and 1919; it dealt fairly with labor and gave it the benefit of improved and stabilized working conditions which were clearly right; it not only did not cost more than private control would have cost during the same period but cost considerably less on account of the economies growing out of unifications, and the total burden put upon the public (through rates and taxes) on account of railroad costs was substantially less than would have been necessary if the railroads had remained in private control and rates had been raised enough to preserve credit; it protected the investment in railroad properties, whereas without Federal control those investments would have been endangered; and it turns the railroads back to private control functioning effectively, with a record of exceptional performance in an exceptionally difficult winter, despite the disruption caused by the coal strike, and in condition to function still more effectively with the normal improvement to be expected in the weather and in other conditions."[1.]

The above conclusions naturally bring out the favorable elements of government operation but they seem to constitute a fair summary of the experience of the United States government during the war period.

1. Reference 16, Page 169

Government Ownership and Operation of Canals in the United States:

During the first half of the nineteenth century several of the states owned and operated canals. In some cases the canals were built by the states while in other cases they received state aid. In the latter case, the ultimate result was usually state ownership.

In 1826 the Pennsylvania legislature passed an act authorizing the negotiation of a loan for $300,000 to begin the construction of canals. This loan was followed by others until in 1835, the state owed over $22,000,000 for railroads and canals which it had constructed. It was finally decided that public ownership of public works was unsuccessful and the program was abandoned in 1844.

The failure of public ownership in Pennsylvania may be attributed largely to corrupt politics and poor management. The projects were not properly financed and their earning power was overestimated. The people would not permit additional taxation and consequently, the bond issues were increased beyond reasonable proportions. The following citation gives some idea of the political situation.

"Millions of wealth were squandered in construction, the public were punished or rewarded as they denounced or sided with those in position, employees were plundered by so-called assessments, and the ballot box polluted for the purpose of perpetuating power. All the avenues of government were completely corrupted, state credit collapsed, and

the public improvements of Pennsylvania became public scandal ... It was not an infrequent occurrence on election day to see the gravel train loaded down with men moving from town to town with the scarcely disguised intention of polluting the ballot box -- repeating at the polls became the rule along the line, and waiting in expectation for the gravel train to come in was the occupation on election day of the local adherent of the railroad boss. Personally, I have seen the paymaster, after requiring the employee to sign the payroll for the full amount of his pay, count out the amount, less ten per cent, and without a word of comment unblushingly take the latter and put it in a bag made for the purpose, and labeled "Political Assessments." The public service became gorged with friends and adherents of those in power, whose principal duty seemed to be to sign the payrolls, submit to assessments, and vote the ticket handed to them."[1.]

In the state of New York canal building was popular about the same time as it was in Pennsylvania. The Erie Canal was opened in 1825 and for several years thereafter an extensive canal building program was followed. In New York some of the canals were desirable improvements and it was a proper function of the state to finance them as the amount of money involved was too large to be financed by private capital. Some canals yielded a surplus revenue and in time paid for themselves. It is claimed that this

1. Reference 21, Page 318

was true of the Erie Canal and it was therefore justifiable to remove the toll charges. This point, however is open to question. The unfortunate part of the canal problem was the poor management and political corruption as was true in the case of Pennsylvania. The language of the following paragraph may indicate prejudice but it seems to explain the situation with regard to politics as they existed in New York.

"The real question today is not whether an equitable system of taxation can be devised for raising the funds to defray the expenses of these public works, but whether the money so raised will be economically and justly expended by public officials. In all industries which call for the introduction of new technical improvements, for the extensions of plant or system, changes of plans and wise discretion in management, it would seem unwise to allow such industries to be managed by governments, whose policies are subject to the fitful changes of party politics. To manage successfully such utilities as canals and railroads it is necessary to devise some comprehensive plan requiring a long term of years for its fulfilment, and this is not easily possible under government control. Furthermore,the Legislature has shown itself unfit to cope with the intricate financial problems which are involved in the successful operation of such industries. Utilities such as these which affect so intimately the life of everyone in the community are sure to become the storm centers of political

discussion, as has been the case in New York State, and the farther they can be kept removed from the field of politics the better it will be for the people and the state."[1.]

There were several other states that engaged in the building of canals and other public works. Among these were Ohio, Georgia, Massachusetts, and Virginia. The results were similar to those of Pennsylvania and New York.

It should not be concluded that all governmental activity is carried on by corrupt politicians. On the contrary, it may be said safely that most of them are honest. Many of the canals which were built were useful and necessary. The legislatures may have been extravagant in an attempt to promote the industrial welfare of their respective states. It is well not to be too harsh in our criticism of the attempts by the various states to build canals. Some unnecessary work may have been performed and it is possible that some useless canals may have been built but if it had not been for the government it is probable that many necessary projects would remain undone.

1. Reference 21, Page 326.

CHAPTER 5

REGULATION OF RAILROADS

Development of Railroad Regulation:

The monopolistic character of the railroad industry has made it necessary and desirable to subject it to some form of regulation. The large amount of capital necessary for the construction and operation of a railroad make it undesirable, in many instances, to encourage or enforce competition. Parallel lines erected merely for competitive purposes constitute an economic waste and often prove disastrous to their owners as well as to the community which they serve. During the early development of the railroad industry in the United States, there was much duplication, but fortunately the rapid expansion of the country enabled many of the overexpanded roads to carry enough additional tonnage to avert financial disaster.

Many states and municipalities rendered assistance in various ways to the early railroad pioneers. Substancial land grants were made and in many instances cash and securities were donated. Railroad stocks and bonds were purchased by various divisions of the government and very often special

privileges were extended to the railroad companies. After 1850, there was sufficient private capital available to take care of the ordinary demand in the industry, and by 1857, all states, except Georgia and Virginia, had turned over their railroad holdings to private companies.[1.]

There has nearly always been a feeling, among the public in the United States, that private ownership and operation of railroads is desirable. This feeling seems to persist with the majority at present, although the advocates of government ownership and operation have a strong following. During their early development, railroads were considered competitive undertakings and it was thought that compulsory competition was necessary in order to protect the interests of the public. This attitude was the cause of much of the overdevelopment which appeared during the early stages. Cutthroat competition in the form of rate wars followed and this led to the formation of pools among competing roads. Rate discriminations were common and the unscrupulous promoters increased the seriousness of the situation by watering the stock and keeping the funds themselves. It was obvious that an industry, so vital to the nation's welfare as was the railroad industry, must prosper. There were but two possible solutions, complete government ownership with or without government operation, or private ownership with government regulation and supervision. The latter method was the choice.

1. Reference 21, Page 350

REGULATION OF RAILROADS

In 1869, Massachusetts created a commission for the purpose of conducting investigations. Its functions included the gathering of statistics and the prevention of accidents. It also determined whether or not charter restrictions were being observed but its power was limited. A similar commission existed about the same time in the state of Ohio. The first real attempts to regulate railroads were made in several of the western states in the few years immediately following 1870. Laws known as the Granger Laws were passed which forbade rate discriminations and fixed maximum rates. These laws were largely the result of the discontent among the farmers in the west who were seeking relief from an overexpansion of agriculture. The public began to view the railroads with suspicion and politicians took advantage of this opportunity by dwelling upon corrupt railroad practices in their political orations. The railroads which had been previously considered an agency of prosperity were looked upon now as a possible agency of evil. Rates were considered discriminatory and often excessive and the roads were charged with increasing the difficulties of the farmers. The Granger Laws attempted to remedy this situation by lowering rates but their success was limited due to the fact that they failed to give adequate consideration to the needs of the railroads.

This legislation was the cause of many interesting legal cases which are the basis of our present legal doctrines.

The railroads contended that the legislation was unconstitutional. An important decision was rendered in Munn v. Illinois,[1.] and although this was not a railroad case, a precedent was established which affected future railroad cases. The Supreme Court held that the state's right to regulate rates was legal and that the remedy for unreasonable rates lay in the political machinery of the state rather than in the courts. Supreme Court decisions have varied somewhat on the question of reviewing rates made by political bodies but in 1890 it asserted its right to do so. The court said: "The question of reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the constitution of the United States."[2.]

The Granger Laws lost some of their effectiveness in 1886 when the Supreme Court held that a state commission[3.]

1. 94 U. S. 113
2. Reference 21, Page 359, also 134 U. S. 458
3. 118 U. S. 557

could not exercise control over interstate commerce. This was a power of the federal government, as was clearly shown in 1887 when the Interstate Commerce Act was passed. The power to regulate railroads was therefore divided between the states and the federal government. The former controlled intrastate commerce, while the latter controlled interstate commerce. This situation was the cause of much conflict and confusion and it was not remedied until 1914 when the Shreveport Rate Case was decided. The court held that lower intrastate rates were detrimental to interstate commerce and that the Interstate Commerce Commission had the right to change intrastate rates and fares.

The establishment of this commission was the beginning of regulation by the federal government. There was some question as to its power during the first few years of its existence, but as time went on Congress passed legislation granting it more power until today it is probably the most powerful regulatory body in the United States. In 1917 the government undertook the task of operating the railroads and continued this until March 1, 1920, when they were returned to their owners. This action, on the part of the government, was considered necessary in order to carry on the war to a successful conclusion. It was really an experiment and hardly can be considered a definite step in the development of governmental control of railroads.

REGULATION OF RAILROADS

Our present system of regulation is based on the Transportation Act of 1920. Congress passed this act after carefully considering the many plans submitted for its approval. It was recognized that the railroad industry was monopolistic in nature and that a new attitude toward competition was desirable. Many of the provisions of the act indicate a careful consideration of this new attitude.

The problem of railroad regulation still confronts us but it is not as serious as it has been in the past. Perhaps we might say that our problem is that of making a good system better rather than that of making a bad system good. There is a great deal of agitation for government ownership and operation, and the advocates of this method point to its success in many foreign countries. Socialists contend that monopolistic enterprises cannot be regulated successfully and that they therefore should be owned and operated by the State. Many people who do not support other socialistic doctrines, favor government ownership and operation of railroads. It may be true that many of the sponsors of this movement have selfish motives, but it is quite evident that the nationalization of our railroads would bring about some desirable results. The problem is one that merits careful consideration and changes should be made only when proved desirable by intensive study and successful experiments.

Transportation Act of 1920:

At the conclusion of the period of governmental operation of railroads it became necessary to devise a plan for the future. Many plans were suggested and among them was the Plumb Plan which provided for the purchase of the railroads by the federal government and thus convert government operation into government ownership. This plan had the support of many prominent people but it failed to be adopted. The plan finally decided upon was embodied in a bill which provided for the return of the railroads to their private owners. This was the Esch-Cummins Act of 1920, more commonly known as the Transportation Act of 1920.

The act provided for the return of railway properties to their owners and increased the powers of the Interstate Commerce Commission. Labor problems and railroad earnings were provided for and a plan for the consolidation of the various railway systems was included. Power was given to the Interstate Commerce Commission to accept or reject any applications,in whole or in part, for the issuing of securities by the railroad corporations. The Commission was also given authority to fix minimum and maximum rates and to control the car service when it is deemed necessary. The railroads must obtain the consent of the Commission in order to receive permission for the construction of extensions or the building of branch lines.

The labor problem was carefully considered in order to reduce the number of disputes and thereby make possible

uninterrupted service. A Railroad Labor Board consisting of nine members was appointed by the President. Three members represented the employees, three the employers, and three members represented the public at large. The duties of this board consisted largely of settling labor disputes which could not be settled by ordinary methods. The findings of this board, however, were not binding on either party and consequently its decisions were usually disregarded. The board finally passed out of existence in May 1926 and the old method of settling disputes was again adopted. There is now provision for mediation and voluntary arbitration as well as local boards of adjustment. The Mediation Board, provided for by the Watson-Parker amendment to the Act in 1925, is composed of five members, all appointed by the President from the general public.

"From August 9, 1926, when the Board actually began to function, up to May 1, 1928, it had received 351 major applications for services of the Board in mediation. Of this total, on Mayl, 1928, 237 cases had been adjusted. Of these 133 were settled by mediation; 40 by arbitration; 59 had been withdrawn through mediation or by voluntary action of the parties, and 5 were closed by action of the Board for lack of jurisdiction. In only one case had it become necessary for the Board of Mediation to notify the President of the United States of an emergency situation which called into operation Section 10 of the law and resulted in the creation

of an Emergency Board. In addition to the foregoing the Board has received some 103 applications for services in grievance matters of lesser import usually involving the interest of a single employee. In these latter cases services have not as yet been extended, pending action of carriers and their employees in creating adjustment boards under the law and also pending the formulation of a policy on the part of the Board of Mediation with respect to the handling of these grievance matters."[1.] This achievement by the Mediation Board would seem to indicate that voluntary arbitration was successful and that compulsory arbitration was not needed. The success so far, however, may be attributed, at least in part, to the general prosperity of the nation. Although compulsory arbitration is now only a bare possibility for the far-distant future, it has its merits and should be kept in mind.

The Transportaion Act includes a Rule of Rate Making which provides for control over rates and earnings by the Interstate Commerce Commission. "Section 15a provides that " In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures

1. Reference 21, Page 367

and equipment, earn an aggregate annual net railway operating income equal,,as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."[1.] Congress fixed the rate of return at 5½ per cent for the first two years after the passage of the act. The Commission was given authority to increase this by an amount not exceeding one half of one per cent for the purpose of providing for improvements, additions and betterments. This provision extended only for the two year period and was of no consequence as the railroads failed to earn the authorized five per cent during that period.

The Transportation Act gave the railroads a right to earn a fair return but the government did not guarantee to make up the difference if it was not earned. The roads received the right to have rates that would give them a fair return at least on group values if not on individual values. It is the duty of the Commission, under the act, to see that the earnings and the condition of the roads are protected. It is also the duty of the Commission to see that the public interest is protected.

1. Reference 20, Page 22

The Hoch-Smith Resolution:

After the close of the World War the agricultural interests of the United States began to feel the effects of a depression and sought relief by means of legislative action. The Hoch-Smith Resolution was passed in 1925 and its purpose was to extend to the farmers relief in the form of lower railroad rates.

The resolution provided for a complete investigation by the Interstate Commerce Commission of the freight rates for the purpose of removing unreasonable , unjustly discriminatory or preferential rates. In revising rates the Commission was directed to consider "the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years."[1.] Because of the existing agricultural depression the Commission was directed "to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service."[2.] Any cases that were pending were to come under this resolution.

1. Reference 20, Page 60
2. Reference 20, Page 60

The most important part of the resolution is the provision which reads, "....it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far it is legally possible to do so, to the end that commodities may freely move."[1.]

This resolution may prove to be an important step in regulation of railroads. It seems to provide for a decided departure from previous policies followed by the Interstate Commerce Commission. Rates are to be adjusted according to the condition of the particular industry which they affect and general and comparative levels in the market values of commodities are to receive consideration.

The attitude of the Commission, previous to the adoption of this resolution, is expressed in the following statement. "This Commission has often said that it can not require of carriers the establishment of rates which will guarantee to a shipper the profitable conduct of his business. The railway may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient."[2.]

1. Reference 20, Page 59
2. 22 I, C. C. 407, 410 (1912) Reference 20, Page 61

The results of the Hoch-Smith Resolution may not be as serious for the railroads or as beneficial to the farmers as was expected by its sponsors. It is contrary to law to reduce rates to a point where they will tend to become confiscatory to the railroads and the Commission has recognized this fact in its findings. The following statement seems to explain the attitude of the Commission.

"Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service, in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less valuable. The substance of the provision of the resolution quoted above is that agricultural products affected by depression shall in this respect shall be included in the class of most favored commodities, to such extent, at least, as may be 'compatible with the maintenance of adequate transportation service'."[1.]

It is difficult to estimate the results of this resolution as it has not been on the statute books very long and it has not been possible to carry out all of its provisions. If it will help the farmers without seriously injuring the railroads, it will be extremely valuable, but unfortunately it seems to seek to charge what the traffic will bear.

1. Reference 20, Page 65 -- 122 I. C. C. 235, 264 (1927).

Railroad Valuation:

The Interstate Commerce Commission succeeded, after much persistent effort, in persuading Congress to pass the Valuation Act of 1913. This act provided the Commission with authority to determine railroad valuations with certain restrictions The case of Smyth v. Ames is the judicial basis of the Act which reads that the Commission "shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and the reasons for any differences between any such value, and each of the foregoing cost values."[1.]

In order to carry out the stupendous task required by the Act, a Bureau of Valuation was organized. The country was divided into five sections and the personnel of the Bureau was divided into three sections. The work is still in progress and its cost is tremendous. Except in a very few cases, the Commission has been unable to determine the original cost to date of a railroad. This is due to several reasons but chiefly to the lack of available records and to the loss of identity of various items because of reorganizations and mergers.

1. Reference 16. Page 239

Railroad Valuation:

The problem of arriving at the cost of production new presents many difficulties. A valuation date is determined and inventories are taken as of that date. This date varies with different properties. The cost of the inventory taken is figured on a basis of the cost as of the valuation date plus the cost of laying out and construction. The commission attempted to figure a fair average price by having the carriers file statements showing prices paid for materials and installation for periods ranging from five to ten years prior to June 30, 1914. A fair allowance was made for overhead and an allowance of from two to five per cent was made for the cost of engineering. The overhead allowance was based on past experience while the engineering allowance was based on the construction cost of the road. Allowances also were made for general expenditures and for the cost of interest during construction periods.

In order to determine the cost of reproduction less depreciation, it is only necessary to consider the depreciation as the reproduction cost has been figured above. There has been some disagreement as to the proper method of figuring this item. "The Commission has defined depreciation as "exhaustion of capacity for service" or as "the lessening in cost value due to the smaller number of service units in the property as found, than in the same property new."[1.]

1. Reference 20, Page 151

The problem of figuring depreciation is by no means confined to the railroad industry but it seems to present itself in all its difficult phases to the Commission. The problem of obsolescence must be taken into consideration and this is no easy task as there is much room for different opinions as to the method of calculation. The railroads seem to prefer to consider depreciation as deferred maintenance and they contend that a properly maintained railroad does not depreciate. The courts have held that permanent improvements paid out of earnings are not legitimate charges to operating expenses in determining fair rates. In Illinois C. R. Co. v. I. C. C., 206 U. S. 441; 1907, the court held that "expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration, and improvements that will last many years should not be charged against the revenue of a single year."[1.]

The Commission contends that depreciation should be figured and bases its contention on the decision of the Supreme Court in Knoxville v. Knoxville Water Co., 212 U. S. 1, 13-14; 1909. "Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good

1. Reference 16, Page 243

the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning."[1.]

The Commission encountered further difficulty when it attempted to figure the original cost and present value of carrier lands. It had practically given up the attempt when the Supreme Court ruled in favor of the Kansas City Southern Railway which sought to compel the Commission to figure the cost of reacquiring its lands. Congress finally relieved the Commission of this duty in 1922 when it passed an amendment to the Act. This amendment was made because the Supreme Court refused to permit extra costs of acquiring lands over present values to be considered in rate-making. The reasons given by the court in the Minnesota Rate Cases are very significant and may be summarized in the following manner.

1. It cannot be assumed that a railroad need pay more than the fair market value of adjoining lands when securing its right-of-way. The railroad is equipped with the governmental power of eminent domain. It has been granted such power to prevent advantage being taken of its necessities.

1. Reference 16, Page 243

2. If the land was secured as a result of condemnation proceedings, it would be secured at its fair market value. The inquiry in such a proceeding would be as to what the owner of the property lost who was to sell his land to the railroad, not what the railroad had gained. The owner could not claim an additional sum because of a peculiar value of the land to the railroad, or by reason of the fact that its combination with other tracts to make a continuous right of way would give it special value.

3. The value of railroad lands is usually measured by the present value of adjoining lands. Present value is in large measure affected by the presence of the railroad. If the railroads were not there, the value of the land in the vicinity would be less. Any extra costs of reacquiring land could not logically be added to the present value of adjoining lands. If included at all, they should be added to what the value of adjoining lands would be if the railroad were not in existence. This point was brought out by the Court in the Minnesota Rate Cases as follows:

> ....it is manifest that any attempt to estimate what would be the actual cost of acquiring the right-of-way, if the railroad were not there, is to indulge in mere speculation. The railroad has long been established; to it have been linked the activities of agriculture, industry and trade. Communities have long been dependent upon its service, and their growth and development have been conditioned upon the facilities it has provided. The uses of property in the communities which it serves are to a large degree determined by it. The values of property along its line largely depend upon its existence. It is an integral part of the communal life. The assumption of its non-existence, and at the same time that the values that rest upon it remain unchanged, is impossible and can not be entertained. (230 U. S. 352, 452.)

4. The existence of a special railway value in a parcel of land which might lead a railroad to pay more than its market value must rest upon an estimate of the value of the railroad use as compared with other business uses. It involves, therefore, a consideration of the returns from rates. But the rates are themselves in dispute, and a value is wanted for the purpose of regulating rates. Such a value must be independent of earnings from existing rates. "[1.]

There are other valuation items including appreciation of roadbed, going-concern value, franchise value, good-will, and strategic location that merit consideration but an exhaustive study of these items would cover many volumes and therefore it is possible only to mention them here. The work of valuation has not been completed but it is going on rapidly. The Commission was called upon to determine the value of the properties of the St. Louis & O'Fallon Railway Company in order to determine the amount of excess income could be claimed by the government. The Commission used the values as of June 30, 1914 plus the costs of additions since that time. The carrier insisted that the full reproduction cost as of the year in which the earnings were made should be the basis of valuation. A special three-judge[2.] court held in St. Louis upheld the contention of the Commission. The case, however, has been referred to the Supreme Court of the United States and its outcome will be important.

1. Reference 20, page 156
2. 22 Fed. (2d) 980.

Rate Problems:

The problem of rate making follows very closely that of valuation. The Transportation Act of 1920 gave the Interstate Commerce Commission the right to fix minimum as well as maximum rates. This additional power gave the Commission an opportunity to prevent rate wars which had been more or less frequent up to this time. It also tended to prevent low rates on particular commodities to the detriment of other commodities carried over the same lines. If the Commission finds a particular rate to be discriminatory, it has the power to fix an exact rate in that particular instance. In the case of through rates, the Commission may only fix maximum rates if one of the carriers included in the through route is a water carrier.

Under the Transportation Act the Commission has authority over intrastate rates as well as interstate rates. It may change intrastate rates if they are found to be discriminatory against persons or localities in interstate commerce. Some dissatisfaction was caused by the inclusion of these provisions but they have been upheld by the courts. The following quotation from the Minnesota Rate Cases explains the attitude of the courts and has been the basis for some of the more recent decisions. "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of

interstate and intrastate operations."[1.]

The more important recent rate controversies involve transcontinental and lake-cargo rates. In the case of transcontinental traffic the railroads encounter competition from water carriers. This has occasioned, in some cases, the reduction of coast to coast rates to a point where they were less than those between intermediate points. This condition was corrected after much controcersy and by 1920 the rates to the Pacific coast were at least no lower than those to intermediate points. The shippers in the mountain region sought to have the Commission reduce rates on commodities coming from the east to a point below the through rate to the coast. They claimed that because they were located nearer the east, they should receive the benefit of their location in the form of lower rates. The Commission denied their request on the grounds that through rates could not be increased because of water competition and it was not desirable to reduce the rates between intermediate points.

After 1921 water competition became very keen and the rail carriers asked the Commission to reduce rates to the coast to a point less than intermediate rates. This the Commission refused to do and their reason is incorporated in the following statement.

"The record shows that the total tonnage, both eastbound and westbound, of all the water lines is but a very

1. Reference 20, Page 58

small fraction of that of the transcontinental carriers operating west of Chicago. It is evident, therefore, that the diversion of any substantial tonnage from the water lines would have but an inappreciable effect on the net revenues of the rail carriers. On the other hand, it might very seriously impair the ability of the eater lines to maintain their present standard of service."[1] (107 I. C. C. 421, 439.)[1] It may seen from this statement that the Commission has tried to be governed by the provisions of the Transportation Act and has tried to show careful consideration to all concerned. The political pressure has been tremendous but so far, the decisions appear to be for the best interests of all concerned, at least as far as it is possible to make them so.

The coal shippers of the Pittsburgh district of Pennsylvania, the Panhandle of West Virginia, and parts of Ohio claimed that their rates to Lake Erie ports on so-called lake-cargo coal were unjustly high in comparison with those of the southern coal districts. In 1925 the Commission found that the rates were not discriminatory but there were three dissenting commissioners. In 1927 the Commission reversed its previous decision and reduced the Pennsylvania and Ohio rates. The reversal of this decision caused much bitter resentment particulary on the part of representatives of the southern states.

After this decision the carriers who served the southern

1. Reference 20, Page 187

districts filed a new schedule of rates which maintained the previous differential. The Commission ruled that these proposed rates would be relatively unreasonable and therefore did not approve the schedule. It held that the new rates would jeopardize the fair return of the eastern carriers, and that the reduction could not be justified on the grounds of the prosperity of the carriers involved. In support of this latter contention the Commission said, "It is obvious that with the exceptions as to reasonable latitude in the fixation of particular rates found in paragraph (2), Congress has intended the establishment and maintenance of uniform rates upon competitive traffic, which will adequately sustain all the carriers engaged therein...If certain carriers are extremely prosperous, as is said of the southern respondents here, that contingency has been anticipated by the Congress, which has impressed upon the excess of their earnings a trust. The duty of maintenance of a generally adequate and uniform basis of rates is imposed upon the prosperous carrier, so far as it participates in the transportation, by the Congress. To the extent that managerial discretion on the part of a prosperous carrier may have the effect of lowering rates below the general level, it runs counter to the expressed policy of Congress as to uniformity, and nullifies the intent to impress a trust upon any excessive returns for important national purposes."[1.]

1. Reference 20, Page 194

The Commission also based its refusal upon the Hoch-Smith Resolution. It claimed that rates on coal could not be reduced unless rates on agricultural products, including livestock, were reduced. Congress had declared that this latter industry was in a depressed condition and therefore entitled to the lowest possible rates on its commodities.

The southern coal producers were successful in having the Commission's order enjoined by the United States District Court for the Southern District of West Virginia. The case, however, has been appealed to the Supreme Court of the United States and the decision of that body is being awaited with much interest.

In referring to the question of relative charges, Professor J. M. Clark has made the following summary. "To sum up, it appears that problems of relative prices exist in all types of business. The considerations governing such policies are sometimes in conflict. The maximum utilization of existing facilities may conflict with the rule of selling to different customers at prices based on the relative cost of serving them, while too zealous attempts to dispose of surplus products may interfere with the conditions of healthy competition, both among customers and in the industry itself. And the dominant consideration, both in the public-utility field and in general industry, is a rate policy which shall be consistent with fair and healthy

competition, both in the industry itself and among those who, as customers, must use its services and pay the rates it sets."[1.]

1. Reference 18, Page 417

C H A P T E R 6

BUSINESS REGULATION IN THE UNITED STATES

Historical Development:

There has developed, among the present generation, a tendency to consider business from a national viewpoint rather than from a sectional viewpoint. This change of attitude has made it necessary for business men to conduct their activities on a different basis.

The government of the United States took no definite action to regulate trade or industry during its early political life. The constitution granted Congress the power to regulate commerce among the several states and this power has been exercised in respect to specific enterprises. The Interstate Commerce Act of 1887 subjected interstate commerce to supervision and regulation. It should be noted that all regulation up to this time was intended to affect a specific industry or branch of industry or commerce.

The trust evil continued to become more serious, and the people began to fear that the entire amount of capital in the country soon would be concentrated in the hands of a few and used for purposes of private gain.

Politicians sensed the situation, and in 1888, both of the leading parties included in their political platforms, a severe criticism of the trusts and recommendations for improvements in the situation.

This feeling of uneasiness led to the passage of the Sherman Anti-trust Act on July 2, 1890. This was the first attempt by Congress to enact legislation which would indicate a desire to assert its authority to regulate business in general. All previous legislation was of a more specific nature. The Sherman Act made illegal all contracts, conspiracies, or combinations in restraint of trade. It also made any person guilty of a misdemeanor, who monopolized, or attempted or conspired to monopolize, any part of the trade or commerce among the several states, or with foreign nations .

The purpose of this act was to protect both producer and consumer from unjust business practices. It is still an important part of our legal framework, although some important amendments have been made to it, particularly in 1914, when the Clayton Act was passed. The Sherman Act has proved to be of great assistance in the promotion of our national prosperity for it has permitted large-scale production and distribution to be carried on with no fear of monopoly on the part of the public.

There has been other legislation of a regulatory nature since the passage of the Sherman Anti-trust Act but it

has not been so general in scope. In 1906, the Hepburn bill was passed. This placed the power of controlling maximum railroad rates in the hands of a commission. The Trade Commission Act was passed in 1914 and provided for the creation of a commission with various regulatory powers and duties. The Clayton act of 1914 supplemented the aims of the Sherman Act of 1890. Among other stipulations, it prohibited, to a certain extent, local price discrimination, tying contracts, holding companies, and interlocking directorates. The most recent important legislation concerning regulation was the Transportation Act of 1920 which provided a regulatory plan for the operation of railroads. The Webb-Pomerene Act of 1918 was essentially a modification of the principles of the Sherman Act and provided for the legalizing of combinations for purposes of conducting export trade.

The regulative policy of the government of the United States has been a good one. It has tried to be fair with producer and consumer as well as with capital and labor. As economic activity becomes more complex, modifications of our present policy should be made. There should be no radical change in our industrial organization. The effects of such a policy would lead only to a general state of chaos.

Theories of Business Regulation:

It is difficult to determine just what characteristics a business should have in order to be subject to government regulation. The courts have made interpretations and have attempted to make definitions of certain legal tests but complete uniformity is lacking. Our legal structure is based largely upon what has gone before and each new decision by the courts tends to establish a precedent which will be observed when similar cases are presented in the future. The public interest is the basis for our economic and legal activity, and although many mistakes have been made, it is possible to trace this interest in most decisions.

Several theories exist concerning the development of business regulation. "Legalists have these main theories of origin and development: (1) the monopoly theory, (2) the theory that all business is public under the common law, (3) the theory of delegated governmental obligation, (4) the theory of assumpsit and later legislative determination, and (5) the theory of complete legislative determination. The first implies that monopoly was the earliest test to be applied and that it is the test which now creates public utilities; the second theory is that all business is and has been always, public under the common law and that distinctions set up between businesses that are private and businesses that are public are artificial distinctions which arose through a series of mistakes and misinterpretations

of common law principles; the third regards public callings as essentially governmental functions which, for convenience, private organizations are allowed to perform, but which the government cannot fail to regulate in the interest of the public; and the fourth and fifth would agree in allowing the legislature ar present to completely determine social policy in respect of governmental control of business."[1.]

This would seem to indicate a confusion of theories but the problem is not as perplexing as it seems. The attitude of the courts has differed at times in regard to what constitues public interest but this may be accounted for by the fact that a business that now is affected with a public interest may not have that public interest a short time from now. Only necessities are subject to regulation and the definition of a necessity changes with the progress of humanity.

Mr. R. G. Tugwell in his book on "The Economic Basis of Public Interest" has presented an interesting theory which he calls "The Theory of Consumers' Disadvantage". This is the basis of his book and may be summarized as follows:

"1. Courts permit regulation of business when a consumers' disadvantage appears. This is what is meant by the phrase "affected with a public interest."

2. This consumers' disadvantage concretely consists in a harmful rate of charge or an unreasonably poor standard of service to which the consumer is compelled to resort or

1. Reference 11, Page 46

do without.

3. Consumers' disadvantage cannot be inferred from the size, extent, or nature of the business but depends upon whether (1) the commodity dealt in is a necessity (2) and whether from a given market situation harm to the consumer emerges which is not reachable under the public health parts of the police power.

4. The presence of a consumers' disadvantage of the sort described creates what the courts call a 'public interest' (it would be more nearly correct if it were called "consumers' interest," since "public" is equivalent to "consumers"). And the principle of public interest is one under which the courts permit the redressing of a balance of forces in the market unfavorable to consumers. The presence or absence of "public interest" is determined by the presence or absence of "consumers' disadvantage"--whether the court believes that, in the present social situation, consumers are suffering in some necessity of life from unfair rates or inferior standards of service.

5. The problem of the kind of regulation is secondary. It may be under a common law duty to serve which makes it a public utility. It may be under the legislative police powers; the latter regulations are those generally extended first under modern conditions."[1.]

1. Reference 11, Page 92

Price Control:

When Theodore Roosevelt was a candidate for president in 1912, he promised that if he was elected he would sponsor the creation of a federal commission to control trusts and if it was necessary this commission would have the power to fix prices. His policy included administrative regulation of business with price fixing. He was not successful in that campaign although his defeat was probably not due his advocation of this policy. Woodrow Wilson, who was Mr. Roosevelt's democratic opponent and who won the campaign, was an advocate of legislative regulation and administrative supervision of competition. He declared private monopoly to be indefensible and intolerable and in support of this contention aided in the enactment of the Trade Commission Act and the Clayton Act.

It has been said that competition is wasteful and that it fails to regulate both price and quality. This may be true to some extent but it is doubtful if direct control would aid the situation materially. The difficulty of determining proper valuations for rate-making in the railroad industry is small compared with the task of determing valuations for some other industries where the quality and service are more variable. If it is possible for us to have the benefits of large-scale production without the evils of monopoly, it seems that we should continue our present policy of competition in industry.

Price Control:

Price control involves not only the valuation of properties but also the valuation of the quality of products. If this policy were adopted, the government would be involved in an extensive program of interference with business. This would hardly be desirable as it would replace our policy of industrial self-government and industry would lose its incentive to progress. The process would be expensive and of doubtful practical value.

"The Interstate Commission, with its staff, is a large, expensive, and overworked arm of government. If it were multiplied by fifty or one hundred, the burden would be decidedly serious. The control of accounts would be a difficult task by reason of the variety of types of enterprise which would have to be allowed for even within each single trade. And the number of establishments would make valuation difficult and liable to more abuses and corruption than that of the railroads. Could we, in fact, find incorruptible commissioners and agents who were qualified for all these manifold tasks? It is a matter of serious doubt. In the case of the railroads we have not yet solved the difficulty of the strong and weak concerns, nor proved that the policy of consolidations is worth what it would cost. But in general industry this problem is even more acute.

Prices of some farm products would also have to be regulated, to protect the seller against a buyer's monopoly. In this class would be livestock and tobacco, in all probability. Familiar methods of regulation would be wholly out of

place here, for the quality of the raw product is unstandardized, and the supply depends on the seasons to such an extent that price cannot be made to conform to cost except in a very long-run average of good and bad times. Not only are such prices bound to fluctuate, but the differentials between different localities will not follow any absolutely uniform system. One of the things unregulated prices do, and with which regulated prices must not interfere, is to send goods from any place where there may be a surplus to any other place where there may be a shortage by the simple and effective stimulus of a price differential. These differentials would need continual revising: a task which would call for many local committees, effectively coordinated under one supreme head. The central body would be almost certain to fall behind its docket, with the result that necessary movements of goods would be delayed. One way of visualizing the outcome is to imagine the war-time policies of price control made permanent, without the help of patriotic loyalty on the part of those controlled, and with an attempt to shave the margins of net earnings closer than was possible during the war. The result would be an even more burdensome growth of bureaus than we experienced during the war, and their work would probably satisfy no one."[1.]

This seems to explain the possibilities of price-fixing when applied to industry in general. The work involved in carrying out such a program is probably not realized by those who advocate it. For the present it seems best to be satisfied with regulation as we have it.

1. Reference 18, Page 445.

Legal Decisions:

There are a number of legal decisions which have played an important part in the formulation of the nationalization policy of the United States. Several cases have been mentioned and quoted elsewhere in this paper. There seems to be one, however, that stands out more prominently than most others. This is Smyth v. Ames 169 U. S. 466 decided in 1898. It was the ruling in this case which established a precedent for valuation proceedings that has been observed ever since. The state of Nebraska had a maximum-rate law and the legislature of that state reduced rates in this particular instance by 29½ per cent.

The court ruled that the maximum rate set by the state must be high enough to yield a fair return on the value of of the property of the carrier. "A state enactment,...establishing rates for the transportation of persons and property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law....and would therefore be repugnant to the Fourteenth Amendment of the Constitution of the United States. While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and

Legal Decisions:

therefore with due process of law, cannot be so conclusively determined by the legislature of the State...that the matter may not become the subject of judicial inquiry."[1.]

The court ruled that the railroad was entitled to a fair return based upon a fair value but it was rather indefinite as to the method to be used in determining the fair value. A list of things to be considered in arriving at the fair value was given but it was stated that other considerations might enter into it.

"The basis of all calculations as to reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that

1. Reference 16, Page 206

no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."[1.]

The importance of this decision is indicated by the fact that it was used as the basis of the Valuation Act of 1913. The Interstate Commerce Commission was instructed to make a valuation of the railroads in accordance with the general rule of Smyth v. Ames. Because of the fact that the rule is so general, the work of the Commission has been somewhat increased. Professor J. M. Clark has summarized his criticism of the decision as follows:

"This dictum - it is no more - with its bare list of heterogeneous elements, and with all the uncertainty as to the intended relation of these elements to the appraisal of the property, has been accepted as the "rule" of fair value by persons predisposed to seek and find a rule whether one exists or not. Its effect is to leave the basis in doubt between original cost, with subsequent additions, and cost of reproduction, for the other data suggested are of incidental character. The "rule" has also been construed as requiring commissions to make an estimate of reproduction cost as well as of original cost, and to give them both genuine consideration, and while this process of weighing is not one of mere averaging, and the court avoids indicating what weight should be given each element, still if it should be apparent that one element was given no element at all, there might be a presumption that the rule of the court laying down due process of law had not

1. Reference 16, Page 238

been followed. The position in which this places any rate-making commission is a very difficult and ambiguous one. This is especially true in view of the great elaboration which has been given to the reproduction-cost hypothesis since the decision in Smyth v. Ames, for a very cursory canvass may convince the commission that the circumstances justify a valuation based on original cost, and yet it may feel compelled to go through the complex and expensive process of a reproduction-cost analysis, to no useful purpose."[1.]

The ruling in this case may have its failings but nevertheless it is still the rule which is adhered to by the courts. The problem of valuation, to which the rule refers, is by no means solved but it is quite evident that this decision did much to inspire constructive thought on the subject.

1. Reference 18, Page 351-352

CHAPTER 7

REGULATED INDUSTRIES IN THE UNITED STATES

Public Utilities:

Public utilities include those enterprises whose chief function is public service. In order to be classed as such, they must be inherently monopolistic and seek to serve the public in general, and the public must be dependent upon them for a particular service or commodity. In return, the utility company, will, of course, expect to receive remuneration. Gas, electricity, water, and transportation service are now common necessities and the public must have them regardless of price. Modern industrial and social life is so dependent upon them that any interruption in service is keenly felt.

Most public utilities are natural monopolies and competition has been found to be undesirable. It took many bitter experiences and heavy losses to convince the public that competition was expensive when practiced among the utility companies. Rate wars were usually among the harmful consequences. Failure and consolidation inevitably followed and the result was that rates were raised. Competition between utility companies requires an unnecessary duplication

CHAPTER V

REGULATED INDUSTRIES IN THE UNITED STATES

Public Utilities:

of equipment which must be paid for by higher rates if the investment is to earn a fair return. Legislative bodies have become aware of this situation and now are somewhat reluctant to grant permission for the establishment of new public utility enterprises, particularly when they propose to serve communities which already have service.

It has been found advisable for some cities to own and operate certain utilities. A notable example of this is the municipally owned water works of many of our American cities. It has been found that pure water is essential to good health and that the public safety is placed in jeopardy if the water supply is inadequate. This is particularly true in the case of fire.

It is difficult to say just how far our national government and local governments will go in the matter of acquiring ownership of utilities. The public ownership of post offices, public parks, water works, gas works, and some others may be desirable and often necessary to the proper functioning of the government. It seems that when something goes wrong with private management there is a demand for public ownership and when public ownership does not bring the desired results, that also is criticised. This problem is one that requires careful thought and study and action should not be taken hastily.

Government ownership and operation has played an important part in the development of European economic life.

Nationalization has been looked upon with much greater favor among Europeans than it has been by the people of the United States. Public utilities are owned largely by the government in Great Britain and in Germany. The ownership in these cases usually rests with the municipalities.and the results have been satisfactory. The following paragraphs from "Problems of City Government" by L. C. Rowe are interesting and illuminating on this subject.

"In so far as experience may serve as a guide, the results accomplished in the cities of Great Britain demonstrate not only the possibility of offering efficient service, but the actual superiority of municipal over private management, especially in accomplishing those larger social purposes which constitute the highest functions of communal life. The contribution which the British cities have made to social and industrial progress is the brightest chapter in the history of modern city development. In lowering street railway fares, in fostering the extension of the gas service, in striving constantly to improve the water service, the British cities have given to the world a valuable lesson in the possibilities of organized action in improving social conditions. All the indictments against municipal ownership and operation in Great Britain must be quashed when tested by the services which these municipalities have performed in improving the city environment, in making city life more healthful, in removing many of the

causes of disease and of reduced vitality, and in opening a new horizon of the possibilities of communal action in raising the plane of city life.

There is a widespread belief that the lessons of European experience in general, and British experience in particular, are of little or no value to our American cities. The tremendous social significance of the movement for the municipalization of public utilities is dismissed with the statement that the conditions in the United States are totally different from those in Europe. That there are important differences in social organization, in the attitude of the population toward government, and in the traditions of public service, no one will deny; but in spite of these differences the fact remains that the municipalities of Great Britain and of Germany have become positive factors in the betterment of social conditions. Sooner or later American municipalities must place themselves in the same vital relation to the life of the community. In fact, the people have a right to demand that the street railway, the gas, the electric light, and the water services shall be so performed as to further the larger ends of social welfare."[1.]

There is room for honest debate on both sides of the question but for the present it seems best to make haste slowly. Important political considerations must be observed before any important changes could be made in the United States and such difficulties are not easily overcome.

1. Reference 3, Page 179, 180.

Coal:

The United States is credited with having over 50 per cent of the world's supply of coal. Industrial success has been due, in a large measure, to this fortunate situation. Without cheap fuel manufacturing establishments and transportation lines would have higher costs and consequently would be at a disadvantage.

The supply, however, is being depleted rapidly, particularly that of the more desirable grades and varieties. The desire on the part of operators to earn large dividends has encouraged quantity production which, in many cases, has been a production far in excess of demand. There also has been a reluctancy on the part of producers to enter upon a conservation program as it was found cheaper, in most cases, to produce than to conserve.

The by-products of coal used for coking have a tremendous value and there is an almost endless list of uses. It was not until the time of the World War that any real attempts were made to perfect the manufacture of coal tar dyes and explosives from the by-products of coal used in coking. This was left to German genius and ingenuity, with the result that industry in the United States suffered when this supply was cut off. During the progress of the war and since that time, steps have been taken to develop these and other by-products of coal.

If proper steps are taken, the use of a ton of coal may

be greatly increased. It has been estimated that as much as 50 per cent of its fuel value is wasted. It is difficult to create a public interest in this situation so long as the supply holds out and the price does not advance materially. Depletion in the nation's supply of coal may not be of serious consequence for many years to come, but in order to perpetuate the industry for the benefit of future generations, a constructive policy of conservation should be followed. The government may cooperate with producers in an effort to adopt more efficient mining methods and to assist in developing economical methods of obtaining and using the by-products of coke making.

Nationalization of the industry may not be the proper solution for its difficulties but there is need for government supervision,and an educational program should be of material benefit to producers as well as to consumers.

Iron:

The situation in the iron industry, if considered from a national viewpoint, is somewhat similar to that in the coal industry. The ore deposits in the United States are estimated to be nearly 45 per cent of the world's total known deposits. The iron mines are distributed over several parts of the country. In recent years there has been a shift in the chief sources of supply. Up to about 1880, Pennsylvania was the leading district, but since that time it has been

surpassed by the Lake Superior region. This is due to the more favorable situation prevailing in the latter district. The ore is more readily mined, and modern production methods are more easily applied.

The demand for iron in the United States has increased enormously during recent years. Our industrial expansion has caused a drain upon our iron ore deposits, but the opening of new deposits, such as those in the Lake Superior region and in the Birmingham district, has lessened the fear of a shortage in the near future. Iron ore is now so plentiful and cheap that it is profitable to mine only the most favorable properties.

The industrial life of the nation depends, to a large extent, on the production of iron. The demands of industry have made it necessary to import a large amount of iron ore. This due largely to the existence of smelting plants along the Atlantic seaboard, which makes importation from Cuba and Chile often more economical than it would be to use ore mined in the United States. In some cases it is desirable to mix foreign ore with domestic ore in order to get a desired quality.

The production figures for iron ore indicate, in a fair degree, the industrial growth of the nation. They also indicate the rate at which the nation's supply is being depleted. This matter should merit some attention even though the known supply is sufficient for many years to come.

In 1900, the production of iron ore amounted to about twenty-seven and one-half million long tons. In 1920, the production had risen to about sixty-nine and one-half million long tons. This shows the startling increase of over one hundred per cent in twenty years. If the demand continues to grow at this rate, there will be a time when the problem of a possible shortage must be faced. Therefore, it seems to be within the scope of governmental functions to sponsor a program of conservation. New sources of supply should be sought but it is not likely that such discoveries can keep pace with the increasing demand. In order to protect future generations from the ill effects of any wasteful policy that we may pursue, it is necessary that the government consider a program of conservation.

Other Metals:

The situation in the other mining industries presents problems similar in nature to those discussed in connection with coal and iron ore. Some are more favorably situated while others have greater disadvantages. It is difficult to understand how extractive industries, such as mining, can continue forever. Many new sources of supply have been discovered but the number of discoveries is rarely equal to the increase in demand.

The United States leads in both the production and the consumption of lead. The output has increased from about one hundred thousand short tons in 1900 to nearly five

hundred thousand short tons in 1920. This indicates an increase of over four hundred per cent in twenty years. There have been few discoveries of new deposits and many of the old sources of supply have been exhausted. A similar situation exists in the case of copper.

Summary of the Situation in Regard to Natural Resources:

The policy of mine operators usually is to produce the maximum product in the minimum amount of time and thereby reduce costs and increase profits. This, inevitably, results in the waste of our natural resources. In a book entitled "The Relation of Government to Industry", the author, Mark L. Requa, has suggested the establishment of a "Minerals Commission" as a possible means of remedying the situation. His recommendation reads as follows: "That to this Commission be submitted the task of considering the problem of conserving the mineral resources of the United States devising a policy for this government to adopt with regard to foreign sources of supply; that this Commission plan years in advance and that it submit annually a report to Congress with its recommendations for necessary legislation.

That the members of this Commission be selected from men eminent in the various mineral industries; that each be a recognized authority and successful administrator; that they be so selected as to represent separately the more important mineral industries; that their terms of service be for long periods, so that they may become thoroughly familiar with the

problem of raw materials in all its phases; that the Commission be absolutely non-political, - the best men being selected without regard to party affiliations. Unless such a commission be so organized, government had best allow matters to continue as they are. No better example of the futility of political control can be cited than the numberless congressional investigations of the petroleum industry that have caused the expenditure of millions of dollars without one single constructive result so far as aiding in the solution of our petroleum problem."[1.]

The foregoing proposed solution may be subject to some improvements, but it seems to be a step in the right direction. The solution of the problem of mineral conservation will be effected best through government regulation and harmonious cooperation between government and industry. Such a program should work to advantage of both the producer and the public at large.

Oil:

The sinking of an oil well in 1859 marked the beginning of an important economic activity in the United States. Petroleum had been discovered and used to a small extent prior to this time but this event was the beginning of its commercial development. Progress was rapid in the industry during the next few years and in 1865 the beginning of what later became the Standard Oil Company was founded. Large-scale

1. Reference 6, Pages

production was found to be essential to the successful conduct of oil enterprises. The difficulties and costs of transportation were numerous but pipe lines and tank cars aided in the lowering of charges and in increasing efficiency. The possibilities of large profits attracted an abundance of capital which, of course, was of great assistance in the promotion and financing of new enterprises.

There always has been much controversy and debate as to the amount of petroleum available in this country. It is one of those resources that moves from one area to another and consequently much difficulty is encountered in estimating the available supply. Owners of oil lands are in constant fear of having their neighbors sink wells and drain the oil while it is there. This condition has made it desirable for owners to tap the oil as soon as it is discovered in order to avoid losing it. In doing this, the owners have encouraged keen competition because of overproduction.

The life of an oil well varies from a few months to several years but the best production usually comes at the beginning. It is estimated that two and one-half per cent of all the oil wells in the United States produce one half of the oil. The hope for the future production seems to lie in the discovery of new fields. Demand has constantly increased and indications are that it will continue to do so. New uses are being discovered and if the supply holds out, oil probably will replace coal for fuel purposes provided the price can

be kept low enough.

The tendency toward overproduction in the petroleum industry is a condition that warrants some kind of government supervision if the public interest is to be protected. When new fields are discovered, production is begun immediately and the result is the production of a large surplus which must be sold at low price and be used for new purposes. The chief outlet is the fuel market, and selling petroleum for fuel purposes injures, to some extent, the coal industry. A reduced price may be desirable from the standpoint of the consumer, and the substitution of petroleum for coal also may be desirable, but unless the supply of oil is unlimited, the inconvenience caused by a shortage may more than offset any advantages gained from unrestricted production.

The United States government has attempted to conserve the supply for naval purposes by the establishment of naval reserves. The attempt, however, proved to be one of the outstanding scandals of modern politics. It will be many years before public confidence will be placed in any attempt on the part of the government to interfere with production in the oil industry.

If it is not possible to conserve our oil supply, we must seek a substitute. Science has discovered many new things and it is possible that a substitute may be forthcoming in the near future. The automobile has caused a great

increase in the demand for petroleum products. New refinements have increased the mileage per gallon and future improvements probably will increase it still more. In the meantime the government should cooperate with the producers in the industry in order to administrate properly a wise and effective program of conservation.

Forrests:

The demand for forrest products has increased greatly with the general rise in the standard of living. In the early stages of civilization, little use was made of timber except for bare necessities such as for fuel and shelter. The demands of modern society include fine homes and beautiful furnishings. Many industries require the products of timber lands as basic raw materials. The demands are many and varied and supply must be abundant and diversified in order to meet the increasing needs of industry.

Up to the present time the supply of timber in the United States has been ample. However, the uncontrolled axe and the careless destruction of forrests in order to make room for agriculture, have reduced the original acreage tremendously. Forrest fires and careless methods of logging have reduced still further the available lands.

The rapid reduction in the amount of available timber lands has given rise to much discussion in economic and political circles. It is admitted generally that something should be done but it is a difficult problem. Many losses

could be avoided if more economical methods of handling were adopted. Wasteful methods of logging and wasteful methods employed in manufacturing tend to decrease the supply. It is not difficult to point out many existing inefficient methods, but it is more difficult to correct them, particularly when it would cost the owners of timber lands more to take care of their holdings than they would receive by adopting a more economical policy. The forrest problem is one that involves a public interest and should be subjected to governmental supervision.

The government has been hindered from remedying the situation because of faulty land laws. On March 3, 1873, an attempt was made to encourage forrestry. The Timber Culture Act was passed at that time. This measure provided for the granting of a certain acreage to settlers if they,in turn, would agree to plant and cultivate a certain number of trees on the land. This method proved to be a failure and other plans were sought.

The most promising method seems to be that of education. Various courses are offered in different schools and colleges and a general program has been adopted in order to prevent campers and others from causing destruction by fire. The Department of Agriculture now has a division known as the forrest service which seeks to protect and conserve the use of forrests. The President of the United States has authority

under the act of March 3, 1891 "to set apart reserves in any State or Territory, having public lands bearing trees, any part of the public lands wholly or in part covered with timber or under growth, whether of commercial value or not, as public reserves." There are many such reserves which are government property. In recent years many of the states have cooperated with the federal government in an effort to curb the destruction of the nation's timber lands.

In adopting a policy for the supervision of forrestry, objections similar to those of supervising any other industry, are encountered. We may not have come to the stage where complete nationalization of the timber industry is expedient, but the need for supervision in the form of regulation seems apparent if the nation's supply of timber is to be conserved. Othe nations have found it profitable and desirable to protect and cultivate their forrests, and if our forrests are to survive, we must do likewise. For the present, strict government supervision with regulation, and an extensive educational campaign would seem to prove to be the most satisfactory methods to pursue.

Agriculture:

The agricultural problem in the United States is one that has caused much controversy. It is of vital importance to the nation's welfare that proper measures be taken to prevent the exhaustion of the soil. Much can be done in this

direction by the encouragement of owner operated farms. When farms are operated by tenants there is a tendency to exhaust the soil in order to get the maximum crops during the lefe of the tenancy.

There has been much agitation, particularly in political circles, for farm relief measure. In the recent presidential campaign, the farm problem was one of the leading issues. Both of the leading candidates promised to attempt a solution during the coming administration. It has been estimated by the Department of Agriculture, that the farm population has decreased by about four million persons since 1920. In spite of this decrease, the volume of crops has increased. The apparent reason for this is the constant increase in the use of machinery on the farms. Some indication of the importance of farm machinery may be had from the following comparisons:

"One man, two horses, 12 inch walking plow, can plow 1.6 acres per day.

One man, one tractor, 3 bottom gang plow, can plow 8 to 10 acres per day.

One man, 4 horses, 7 foot binder, can harvest 15 acres of wheat per day.

One man, tractor, 8 foot binder, can harvest 25 acres of wheat per day.

One man, tractor, 10 foot binder, can harvest 35 acres of wheat per day."[1.]

1. Reference 32,Page 189

From the foregoing figures it is apparent that the number of harvest hands required, will continue to decrease, and that the seasonal demand for capital in the agricultural communities will tend to become less. The number of farm workers began to decrease about the year 1910, and it is conceivable that the number required fifty years from now will be even less than now in spite of the probable increase in population. Some people consider this an unfavorable sign but they should not overlook the fact that the farm hands that are released from agricultural pursuits can devote their time to other lines of endeavor and thereby be of assistance to the nation in improving its already high standard of living.

If necessary, the government should take steps to preserve the industry, but it is doubtful if such assistance should take the form of a subsidy either directly or indirectly. It is often desirable for a government to subsidize industries when their existence is necessary to the national defence. Our agricultural situation does not seem to warrant action on this account as yet. Our present farm lands are producing sufficient crops to take care of our demands, and there is a substantial surplus in addition. It seems contrary to sound economic theory for a nation to finance new projects or even continue to finance old ones when there already is overproduction in the industry in question.

The establishment of Federal Farm Loan Banks and Joint Stock Land Banks has aided materially the credit situation in

the farming industry. While these institutions have not been as extensive as those established by other nations, they have performed a valuable function. If future conditions should make it desirable to extend our agricultural areas by irrigation and the development of new lands, a furthe extension of government aid would be desirable.

The farming industry would be conducted to the best advantage of all concerned if the farms were operated by owners. This requires government assistance in the form of financing as the financial status of farmers rarely warrants the expenditure of the large investment required. The margin of profit is usually too small to make farming profitable if it must be financed by private capital which usually demands a high rate of interest. Farmers not only need assistance in financing the purchase of land but they also need assistance in financing the purchase of their equipment. It has been suggested that the government outfit and finance complete farms and the occupants be allowed to pay for them over a long period of years. Whether or not such a plan would succeed in the United States is hard to say. However, it should not be attempted until a method has been provided for the profitable disposal of the present annual crops.

Modern machinery will decrease the number of workers required and it is far more desirable for these people to seek employment in other industries than it is to have them develop new lands when there is no market for additional products, at

least not a profitable market. The creation of a demand for new and additional agricultural products may be greatly enhanced by the furtherance of research work and by laboratory experiments. The use of corn stalks for wallboards, etc. is a development which has come from such work. It has created a demand for agricultural products in a new field. The future hope of the industry seems to lie in the progress made in this direction.

C H A P T E R 8

PRESENT TRENDS IN REGULATION

Government Commissions:

The government of the United States has placed much of the work of carrying into effect legislation relating to the regulation of industry into the hands of commissions. These commissions are really administrative bodies but their power is limited and their decisions are subject, in some cases to legislative control, and in all cases to judicial review.

The Interstate Commerce Commission, which was established in 1887, has steadily increased its power until it is now the most powerful commission in the country. Its work pertains to interstate commerce and consequently, it exercises control over practically all of the important railroads. The courts have indicated a willingness to place full confidence in its findings.and in most cases accept them as final if the evidence so warrants.

The commission has made some mistakes but on the whole its existence has been justified. It has tried to be fair in its rulings and it is hoped that it will continue to do so. The opportunities for political corruption are available.

to its members without a doubt, but there has been no evidence of misconduct. Let us hope that its decisions will continue to be unbiased and that its life will be perpetuated.

Organization and Powers of the Interstate Commerce Commission:

"The Commission is composed of eleven members, appointed by the President, by and with the advice and consent of the Senate, for a term of seven years, at a salary of $12,000 annually. The Commissioners are subject to removal by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than six of the Commissioners can be members of the same political party, and no person who is interested, officially or pecuniarily, in any common carrier subject to the Interstate Commerce Act can be a Commissioner. The Commissioners, further, may not engage in any other business, vocation, or employment. A vacancy in the Commission does not impair the right of the remaining Commissioners to exercise the powers of the Commission. The Commission may divide into as many divisions as it may deem necessary (each to consist of not less than three members), each division having full authority to act with respect to the work assigned to it."[1.] (Interstate Commerce Act, sec. 24, as amended by Act of August 9, 1917, and the Transportation Act of 1920.)

"The Commission is endowed with plenary administrative power to supervise the conduct of carriers, investigate their accounts and methods of dealing, and generally to enforce the act. To that end it is the duty of any district attorney of

1. Reference 16. Page 275

the United States to institute in the proper court and to prosecute, under the direction of the Attorney General, all proceedings commenced by the Commission for the enforcement of the act; and the Commission is authorized to require, by subpoena, the attendance of witnesses and the production of books and papers, and the claim that testimony may prove self-incriminatory does not excuse the witness."[2.] (Interstate Commerce Act, sec. 12.).

The Commission is an administrative body acting under the will and guidance of the legislature. The legislature has authority, under the constitution, to make laws but it has no authority to delegate this power. It may, however, delegate power to investigate and determine facts upon which it may desire to make future legislation depend. The following paragraph gives a good summary of the functions of the Commission.

"As an administrative body it enforces the executive power of investigation and prosecution. As a quasi-judicial body it exercises the judicial function of determining the reasonableness of existing rates and of suspending proposed increases of rates pending investigation, and also of declaring the existence of undue discrimination or preference, entitling the complainant to reparation; and its findings in awards of damages for reparation are given prima facie weight in any judicial proceeding to enforce the same.

1. Reference 16, Page 275

It also exercises what has been repeatedly adjudged to be essentially a legislative power in fixing a maximum of rates for the future."[1.] (Frederick N. Judson, Interstate Commerce, 3rd ed., sec. 53.)

The Federal Trade Commission:

The Federal Trade Commission was created by legislative act in September, 1914. It was largely the result of much bitter opposition to the trusts which controlled many industries at that time. The Commission consisted of five members appointed by the President by and with the consent of the Senate for a term of seven years. It was supposed to be nonpartisan, only three members being from the same political party.

This Commission took over the duties of the Bureau of Corporations. The office of Commissioner of Corporations ceased to function and the new body took over its property and employees. The Commission had power to appoint attorneys, examiners and other necessary officials.

The Federal Trade Commission's duties are primarily those of administration and investigation. Its purpose is to assist in the elimination of unfair practices. It has power..."To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations and

1. Reference 16, Page 280.

partnerships."[1.]

Unfair practices as described by the Act of 1914 are the following: "(1)price discriminations; (2) exclusive dealers' agreements; (3) obvious imitations of brands, which were not protected by patents or copyrights; and (4) espionage on competitors. Unfair methods of competition had been made illegal by the Sherman Act of 1890, but the Federal Trade Commission Act of 1914 was more specific in its definition of them. Moreover it created an administrative body of economists to cooperate with the legal department under the Attorney General. Regulation was to supplement and even to supplant prosecution."[2.]

If a person or corporation feels that it is being injured by the unfair practices of another, it may appeal to the Commission and this body will make an investigation. If the Commission finds that the complaint is justified, it gathers the facts and notifies the offending party. Unless this party can show that the Commission is mistaken, the Commission will issue an order to restrain it from carrying on the unfair practices. If this order is violated an appeal may to the courts for enforcement. The courts have usually upheld the findings of the Commission if they have been supported by proper testimony. In such cases, however, the scope of the Commission's power is largely limited to fact finding.

1. Reference 3, Page 156
2. Reference 3, Page 157

PRESENT TRENDS IN REGULATION

Trend of Judicial Decisions:

The trend of recent judicial decisions has showed a marked tendency to approve legislation which extends the scope of public service. More businesses are being considered as being affected with a public interest and the tendency is to extend the police power in order to protect these interests. Legislative measures have been passed for the purpose of regulating various industries and in most cases they have been upheld by the courts. There seems to be no record of a recent case in which the regulation of necessities was not upheld by the judiciary.

Holter Hardware Company v Boyle, 263 Fed. Rep. 149 is the only recent case in which the court has decreed against regulation. In this case it was held that ordinary mercantile business is not necessarily a business involving a public interest. The bargaining is between individuals and does not affect the general public. It was ruled that a legislature has no right to attempt regulation unless the transactions are of material consequence to the public. To permit such regulation would be to change our form of government and this may not be done without the consent of three-fourths of the states acting in unison. The court, however, intimated that if the case had involved necessities, the decision might have been altogether different.

In People ex rel Durham Realty Corp. v La Fetra, 230 N. Y. 429, the court ruled that the relation between landlord

Trend of Judicial Decisions:

and tenant may be one of public interest. The tenement situation in New York became serious due to a shortage of living quarters. Landlords took advantage of the situation and rents were advanced. The opportunity for unscrupulous landlords was one of public concern. In this case it was held that even though the business of renting homes was honest, the state could make regulations if recent conditions or probable future conditions indicated a need for such regulation in the interest of the public. The ruling of the court in this case read in part as follows: "The conclusion is, in the light of present theories of the police power, that the state may regulate a business, however honest in itself, if it is or may become an instrument of widespread oppression...; that the business of renting homes in the city of New York is now such an instrument and has therefore become subject to control by the public for the common good; that the regulation of rents and the suspension of possessory remedies so far tend to accomplish the purpose as to supervene the constitutional inhibitions relied upon to defeat the laws before us."[1.] The statute sustained in this case was also upheld by the United States Supreme Court. (Brown Holding Co. v. Feldman 256 U. S. 170; 1921.)

The Kansas Supreme Court sustained the law creating the State Court of Industrial Relations. "...the court concludes the business of producing coal bears an intimate relation to the public peace, good order, health, and welfare; and such

1. Reference 16, Page 156

business is affected with a public interes; and that such business may be regulated, to the end that reasonable continuity and efficiency of production may be maintained....The Court of Industrial Relations is, in fact, a public service commission, the word 'court' having been employed merely as a matter of legislative strategy. The production, manufacture and distribution of food, clothing and fuel being industries affected with a public interest are made subject to regulation in the same manner as those industries which have commonly been designated public utilities."[1] (State v. Howat, 198 Pac. 686, 694,703; 1921.)

Numerous other cases could be cited but in each instance the tendency has been to justify the police power as a means of regulating industry when a public interest is involved. The trend of the decisions indicates that a monopoly is not essential in order to create a right or necessity for regulation. It is the function of the legislature to regulate and it is the function of the judiciary to determine whether or not such regulations are justifiable under the constitution.

This point is emphasized in Western Union Tel. Co. v. Myatt, 98 Fed. 335,341; 1899. The court said, "The exercise by the state of the power to regulate the conduct of a business affected with a public interest, and to fix and determine, as a rule for future observance, the rates and charges for

1. Reference 16, Page 155

services rendered, is wholly a legislative or administrative function. The legislature may, in the first instance, prescribe such regulations, and fix definitely the tariff of rates and charges; or it may lawfully delegate the exercise of such powers, and frequently does, in matters of detail, to some administrative board or body of its own creation. The establishment of warehouse commissions, boards of railroad commissioners, and the powers usually committed to them, are familiar instances of the delegation of such powers. But by whatever name such boards or bodies may be called, or by whatever authority they may be established or created, or however they proceed in the performance of their duties, they are, in respect to the exercise of the powers mentioned, engaged in the exercise of legislative or administrative functions as important in their character as any that are committed to the legislative branch of the government on the subject of property and property rights. In prescribing regulations or rules of action under the police power of the state for the safety and convenience of the public, or in determining a schedule of rates and charges for services to be rendered, they are in no sense performing judicial functions, nor are they in any respect judicial tribunals. The distinction between legislative and judicial functions is a vital one, and it is not subject to alteration or change, either by legislative act or judicial decree, for such distinction inheres in the constitution itself, and is as much a part of it as though it were definitely

defined therein."[1.]

It is not necessary that a business be of the so-called public utility type in order to be subject to regulation. It may be regulated if the legislature deems it in the interest of the public to do so. The courts have maintained that it is their right to determine the reasonableness of rates. Legislative acts prescribing rates may prove to be so unreasonable that they may destroy property rights. In such cases the courts have not sustained the acts of the legislatures. The regulation of rates must be in the interest of the public and not for the purpose of confiscating private property without just compensation.

The foregoing discussion and the quotations cited indicate a definite trend toward the recognition of public interest as the basis of regulation. The legislatures will probably continue to pass regulatory measures and the courts will continue to review them for the purpose of determining their reasonableness and constitutionality. This process may be rather slow but it is probably justified as the judicial body, being more conservative, is likely to check the errors of the legislature, which is likely to be more radical. New industries are constantly being added to the list of those being affected with a public interest. This seems to be the trend of judicial decisions.

Reference 16, Page 157

PRESENT TRENDS IN REGULATION

Public Opinion:

Public opinion is one of the most powerful forces behind the government. It is this force which is continually exerting an influence upon the legislatures and unless the members of these bodies heed it promptly they often seek reelection in vain. Some people think that our entire system of control should be guided by public opinion. It is doubtful if this is possible but the idea merits some consideration. It is probable that many of the decisions made by the public are made in haste and without due consideration to all of the important facts. In our courts of law the rich and the poor are treated with equality but the trend of public opinion has been to show favoritism toward the poor.

Public opinion does not always wait for proof before it renders its decision. "Public opinion has a keen eye for imposture, and does not wait to have it proved to the hilt, as in a court of law. And one's fellow-craftsmen can judge of such things more truly and on less evidence than any court would require. The pressure of public opinion is felt even by those whose misconduct is still their own secret. People may condemn the kind of thing I am doing without knowing that I am doing it, but my own knowledge makes the condemnation strike home."[1.]

1. Reference 18, Page 222

The public now recognizes the need for regulation in order to protect its interests but it also recognizes that there are many economies that can be effected by means of large-scale production and distribution. The recent World War gave rise to big business and since that time there has been a general reluctancy to condemn large enterprises merely because they are large.

Judicial decisions reflect the trend of public opinion but it is usually a slow process. The change of public opinion in regard to monopolies is reflected to some extent in the judicial decision concerning the United States Steel Corporation. The court ruled, in this case, that the dissolution of this great corporation and potential monopoly, would not be in the best interests of the public in general. Of course such a ruling caused some comment but it seems that court acted in the best interests of all concerned.

It is largely through the strong influence of public opinion that most of our social legislation has been passed. It is sometimes unfortunate that this great influence is not reflected more quickly in legislative and judicial decisions. Professor J. M. Clark makes the following criticism on this point: "The bent of workmanship plays a further part in control by virtue of the fact that some of the classes who are most influencial in guiding the course of control are themselves governed by a strong professional

esprit. One of the greatest safeguards of our system of attempted self-government is the bent of judicial workmanship in our higher judges--but the judge tends to make the Constitution an end in itself instead of an instrument of service to the nation's ends."[1.]

1. Reference 18, Pages 250-251.

CHAPTER 9

CONCLUSIONS AND DEDUCTIONS.

SUMMARY: FINDINGS AND RESULTS OF THE STUDY:

The increase in population has tended to increase the number of perplexing economic problems, particularly the problems relating to the regulation of industry. Regulation is not new, for it has existed for many centuries. From the earliest stage of man's development he has been confronted with the problem of facing new economic problems. The situations arising today are vastly different from those of the past and it is, therefore, necessary to find new means of applying regulation.

The colonists, who came to America, found an abundance of natural resources which they were free to utilize. Up to the time of the Civil War economic problems were comparatively simple and the laissez-faire doctrine of Adam Smith was the guiding principle. After the Civil War the country expanded rapidly. Industries and transportation systems grew rapidly and the need for a system of regulation became imperative.

Individualism in its true aspect rarely exists, but we have it today in a modified sense. The proposed systems for solving economic problems are many and varied. State socialism, syndicalism, gild socialism, and anarchism are the outstanding

ones and these have attracted widespread attention and have the support of some of the world's most distinguished scholars and political thinkers. With the exception of state socialism as practiced in Germany , all of the systems mentioned seem to overlook the essential element of human nature.

Modern industry in the United States is characterized by large-scale production and industrial combinations. Large-scale production tends to reduce costs up to the point where the law of diminishing returns begins to function. When that point is reached, it is more profitable to increase the number of production plants. Industrial combinations are of two kinds, horizontal and vertical. Horizontal combinations are those that combine to produce one article and vertical combinations are those that combine the production of different articles, all of which enter into the same finished product.

Combinations have been beneficial to the public interest when the economies effected have been passed on to the consumer in the form of lower prices. They have been detrimental when formed for the purpose of eliminating competition and securing monopoly profits.

There has existed,ever since the adoption of the factory system, a conflict of interests between capital and

labor. New conditions give rise to new causes for conflict, and it is necessary that a successful means of arbitration be found. The wage-earner had to fight many legal battles before he obtained his right to combine. The capitalist, on the other hand, is now fighting to keep the government from infringing upon his position by the imposition of regulations and other restrictive measures.

Monopolies began to come into existence about the year 1879 when the Standard Oil trust appeared. The history of the trusts is a fascinating one. The outstanding evil of private monopolies is the tendency to obtain monopoly prices and to crush competitors. The benefits are largely those accrued from large-scale production and large-scale management. In the United States there are two prominent examples of monopoly. These are the Standard Oil Company and the American Tobacco Company. Public opinion has changed from an absolutely hostile attitude to a more considerate attitude.

Society concedes certain rights and privileges to its members, but it also imposes certain duties upon them. Social Agencies aim to protect its members when fundamental rights are infringed upon. The development of our legal system has been a long process. It began as soon as the groups ofindividuals began to grow so large that they became impersonal. The tendency has been toward a growing recognition of public interest.

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One of the vital influences in economic development is that of religion. During the Middle Ages, the Church held a dominant position but it no longer holds this position. It has been recommended that religion change with the times, but it is doubtful if such a religion would be any religion at all.

In order to provide for the increasing need of regulation in the interest of the public, the legislatures have passed measures containing such provisions. The right to enact such legislation is based upon the police power. The courts have shown a willingness to sustain measures adopted for this purpose, except when it has been obvious that these powers were being used for purposes of confiscation.

Many experiments in government control have been attempted but the most radical is that attempted in Russia. The Russian experiment involved a complete change from an imperialistic to a communistic form of government. The new government is in its infancy and, therefore, it is difficult to draw conclusions as to its possibilities. It can be said, however, that it has, at least, created an interest among the people in political affairs of the nation.

The government of the United States operated the railroads during the period of the World War. The purpose of this program was to provide for the proper movement of troops and supplies. This purpose was fulfilled but it proved

to be a rather expensive undertaking.

During the early part of the nineteenth century there was an inclination on the part of several states to own and operate canals. Pennsylvania and New York were the leaders in this movement but the results were not satisfactory. Political corruption and poor management led to the abandonment of the plan.

The railroad industry is one that is considered monopolistic in character and, therefore, should be subject to regulation in the interest of the public. The early history of the railroads indicates that competition has not been successful. When it became evident that the owners were attempting to use monopoly tactics, the various legislatures began to pass regulatory measures. The Granger Laws, which were passed soon after 1870, fixed maximum rates and forbade discriminations. The federal government established the Interstate Commerce Commission in 1887, and passed the Transportation Act in 1920, which increased the powers of that body. In 1925, the Hoch-Smith Resolution was passed. This measure provided for relief to farmers in the form of lower railroad rates.

The problems of valuation and rate-making are among the most difficult in railroad history. In 1913, the Valuation Act was passed which imposed upon the Interstate

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Commerce Commission the task of determining fair values. This work is still incomplete, although it is progressing rapidly.

There are many theories existing concerning business regulation and its development. The real basis, however, seems to be the theory of consumer disadvantage. This seems to be the reason for regulating industry in the interest of the public. There have been some people who have advocated the fixing of prices as a means of curbing monopolies. This, however, involves many intricate details which would incur much expense . The most prominent legal decision in the matter of regulation and rate control seems to be that of Smyth v. Ames. It was this decision that established a precedent for valuation proceedings , which has been observed ever since.

Among the industries other than railroads,which are regulated to some extent, are public utilities and natural resources. In the case of utilities, such as water works, gas, and electric plants, public parks, etc., the governments of Europe have favored public ownership but in the United States, private ownership has survived in most cases. The trend, however, seems to be toward municipal ownership in the case of water works, parks, and in many cases, gas and electric plants.

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The United States holds a very favorable position in the matter of natural resources. It has 50 per cent of the world's supply of coal, 45 per cent of the iron and a large percentage of oil and other minerals and metals. The attitude of the owners of these lands has been reluctant to any program of conservation and, consequently, the supplies are being depleted rapidly. This is particularly true of our forests.

The government of the United States has placed much of the work of regulation in the hands of Commissioners. The I. C. C. and the F.T. C. are the two most prominent regulating bodies. This method was found to be desirable inasmuch as the fact finding work was too extensive and too specialized to be undertaken by the legislature.

The legislature tends to recognize more and more new industries as being affected with a public interest and the courts tend to sustain this action on the part of the legislature. Public opinion in the United States seems to favor the present policy of regulation, although the advocates of government ownership of railroads have a strong following. Progress is being made in rapid strides and let us hope it will continue to do so.

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Conclusions:

The value of this study is to be found in its analysis of the fundamental causes of economic progress. It explains, to some extent, the basis of our present economic structure and seeks to explain the influences which tend to cause changes in our policies. Perhaps the chief value of the study may be found in any economic interest it may create among its readers.

The historical analysis has indicated that the laissez-faire policy has been followed by a policy of regulation, and regulation in turn has been followed by nationalization. The problem of controlling industry involves the problem of coordinating freedom and authority. The early history of the United States was characterized by a policy of laissez-faire. After the Civil War the legislature assumed the attitude that compulsory competition was necessary. When Woodrow Wilson became president he sponsored a program of legislative regulation and administrative supervision. Rate fixing is now being attempted by the Interstate Commerce Commission. The next method is Nationalization, and we may conclude from our historical analysis that this is the natural trend.

Radical changes in our government should not be tolerated. Our system of government is good and our aim should be toward improvement in present methods rather than toward complete change.

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The advantages of large-scale production and distribution are necessary to the maintenance of our present high standard of living. This necessitates, in many cases, the existence of monopolies. Private monopolies should not be permitted to conduct their affairs without regulation. Private industry has been the most economical in the United States, but it must be subjected to complete regulation, if the public interest is to be protected. It is not desirable to enforce competition among natural monopolies, as this necessitates a duplication of investment and, consequently, higher costs to the consumer.

We may conclude that all private rights are subject to regulation when they affect the public interest. Just compensation must be allowed for all property confiscated for this reason . The modern trend is toward an extension of the scope of the police power. It should be the function of legislatures to pass upon economic questions. While it is true that this body is doing this, it is also true that the judiciary is exercising a check upon this function, which seems, at times, to be a hindrance to progress.

In concluding this paper, it seems proper to suggest that the Government of the United States seek to cooperate with industry, in an effort to increase efficiency and promote economic welfare. This is particularly true in the case of natural resources, where depletion is going on at an alarming rate. The encouragement of religion and educational programs is also necessary and desirable.

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For the present we may conclude that the United States is not ready for complete nationalization. If it comes, it should come gradually. Calvin Coolidge has fittingly expressed the true situation when he said-

> " Society requires certain public activities, like highways and drainage, which are used in common, and can best be provided by the government. But in general the country is best served through the competition of private enterprise. If the people are to remain politically free, they must be economically free. Their only hope in that direction is for them to keep their own business in their own hands. "

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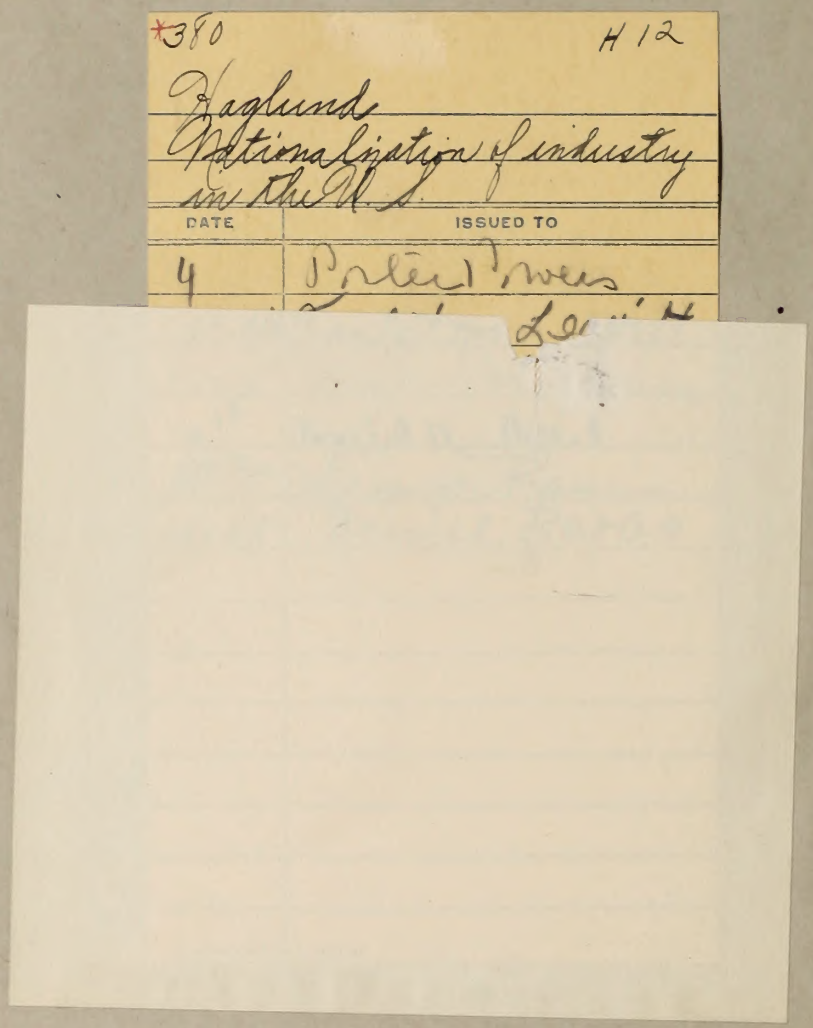
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